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CONFIRMATION OF EDWIN MEESE III

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE CONFIRMATION OF EDWIN MEESE III TO BE ATTORNEY
GENERAL OF THE UNITED STATES

JANUARY 29, 30, AND 31, 1985

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CONFIRMATION OF EDWIN MEESE III

TUESDAY, JANUARY 29, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:14 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Mathias, Kennedy, Hatch, Laxalt, Metzenbaum, Simpson, Specter, Grassley, Leahy, Heflin, Denton, East, DeConcini, Baucus, and McConnell.

Staff present: Duke Short, chief investigator: Joseph Kopka and Frank S. Klonoski, investigators; and Ruth E. Lucas, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Today, the Judiciary Committee begins its reconsideration of the nomination of Edwin Meese III to be Attorney General of the United States.

I want to welcome Mr. Meese, his lovely wife, Ursula, his daughter, Dana, his son, Capt. Michael Meese, and his daughter-in-law, Ramona, and others in attendance today who are interested in this nomination.

As this Nation's chief law enforcement officer, the Attorney General is one of the most important officials in the Federal Government. Mr. Meese has a long and distinguished record of public service and experience in the field of law enforcement, and I believe he is well-qualified to be Attorney General of the United States.

I also consider Mr. Meese to be firmly committed to the fair administration of justice for all Americans, and to upholding the independence of the Justice Department.

As my colleagues are well aware, this nomination first came before this committee in February of last year, and we have held four separate hearings on it, from March 1 to 6, 1984. On March 22, the committee's ranking minority member, Senator Biden, and I asked that an independent counsel be appointed to resolve certain questions regarding the nomination.

On that same day, Mr. Meese himself independently requested such a probe.

Mr. Jacob Stein was selected as the independent counsel to investigate these matters. This investigation lasted more than 5 months and generated a report of almost 400 pages. The report is thorough, complete, and true to its mandate, the investigation of any possible violation of criminal law by Mr. Meese. Its conclusions are strong and unequivocal. There is no basis whatsoever for a criminal prosecution of Mr. Meese.

I want to add that the investigation covered not only those issues outlined by Senator Biden and me, but five others deemed relevant by the Independent Counsel.

I think it is worthwhile at this time to review the conclusions and scope of Mr. Stein's efforts in order to demonstrate the thorough nature of this investigation.

The Office of Independent Counsel conducted 11 separate inquiries relating to Edwin Meese III. They were, first, Mr. Meese's failure to include in his Financial Disclosure Statements a $15,000 loan made by Edwin Thomas to Mrs. Meese;

(2) The relationship, if any, of certain loans made to Mr. and Mrs. Meese and the appointment of Edwin Thomas, Gretchen Thomas, Tad Thomas, John McKean, Gordon Luce, Edwin Gray, Marc Sandstrom, Clarence Pendleton, and Thomas Barrack to Federal jobs;

(3) Mr. Meese's and his family's stock trading;

(4) Whether Mr. Meese obtained special treatment from government agencies for business entities in which he had a financial interest;

(5) Mr. Meese's change of status from the retired Army Reserve to the Active Reserve and his later military promotion;

(6) Mr. Meese's statements to the Subcommittee on Human Resources of the Committee on Post Office and Civil Service, House of Representatives, and the Senate Judiciary Committee, concerning Carter campaign materials;

(7) Mr. Meese's retention of cufflinks given to him by the government of South Korea;

(8) Mr. Meese's receipt of payments by the Presidential Transition Trust and the Presidential Transition Foundation;

(9) Mr. Meese's reporting on his Financial Disclosure Statements of reimbursements for travel expenses;

(10) Mrs. Meese's receipt of funds from the William Moss Institute;

(11) Mr. Meese's connection, if any, with Federal grants to Pepperdine University and American University.

Allegations 1 through 6 were identified in the Order Appointing Independent Counsel. Allegations 7 through 11 came to our attention during the investigation.

In the course of the investigation, we examined all documents we believed might be relevant. This included files of the White House Office of Presidential Personnel, the Counsel to the President, and White House Central Files relating to how individuals who allegedly had financial relationships with Mr. Meese were considered for Federal positions. Agendas and handwritten notes taken at White House Senior Staff meetings were reviewed.

"We also examined numerous files and other documents in the possession of Mr. Meese and his staff, including correspondence, entries in Mr. Meese's telephone logs and daily schedules, and contemporaneous notes taken by Mr. Meese and by members of his staff.

"We obtained similar documentation from other government agencies, including the General Services Administration, the Merit Systems Protection Board, the Departments of Interior, Commerce and Labor, the Small Business Administration, and the Departments of Defense and the Army, relating to how certain individuals were considered for Federal positions, and to other allegations listed above.

"We obtained documents from various witnesses who were considered for Federal positions or who had knowledge relating to such consideration. Finally, we obtained documents and other information from entities which independently conducted inquiries into certain allegations. They included the Federal Bureau of Investigation, the General Accounting Office, the Securities and Exchange Commission, entries in Mr. Meese's telephone logs and daily schedules, and contemporaneous notes taken by Mr. Meese and by members of his staff.

"We were refused no documents we sought.

"With respect to Mr. Meese's financial transactions and his reporting of those transactions, we examined all documents we believed might shed light on the drafting, preparation, and review of Mr. Meese's Financial Disclosure Statements, including files maintained by his office and by White House Counsel. These files contained handwritten and typewritten drafts, working papers, memoranda, notes and internal White House communications. We obtained records of all of Mr. Meese's tax returns and his accountants' tax preparation workpapers and internal notes and memoranda for the relevant years.

"Before reaching the conclusions we set forth in this report, we conducted investigative interviews with over 200 witnesses. With rare exception, each interview was conducted by at least two staff members. Forty-five of the witnesses testified before a Federal grand jury impaneled on May 8, 1984 by the United States District Court in the District of Columbia. Mr. and Mrs. Meese were among those who testified. No witness refused to testify or sought immunity to consideration of testifying.

"Based upon the investigation described above, we find no basis with respect to any of the 11 allegations for the bringing of a prosecution against Mr. Meese for the violation of a Federal criminal statute."

Now, that was a statement by the special counsel appointed to investigate this matter.

Now, as my colleagues are aware, prior to the completion of this investigation, I decided on September 7 of last year to remove Mr. Meese's nomination from the committee's agenda. I did so because I felt that any further consideration of the matter during the election would be very politicized and would not serve the public's best interest.

The election is now over, and Mr. Meese's nomination has been resubmitted to the Senate. It is now in the public's best interest, and it is our duty as Senators, to move forward on this nomination.

Therefore, it is my intention to push forward with these hearings and to take a vote on this nomination on Thursday of this week. I want to be fair to everyone on this nomination, and I do not intend to deprive any Senator of his rights in this matter.

However, I see no reason whatsoever to pursue issues which have already been thoroughly investigated and resolved. Unreasonable inquiries and their inevitable delays would be unfair to a number of people. They would be unfair to President Reagan, who wants Mr. Meese to serve in his Cabinet and, as any President, deserves to have a prompt decision by the Senate on his nomination. They would be unfair to outgoing Attorney General William French Smith, who has indicated his desire to return to private life after a distinguished career of public service. They would be unfair to Mr. Meese himself, who has already undergone one of the most thorough and exhaustive investigations of a person's personal and business dealings I have ever witnessed. Most important, any further delay would be unfair to the American people, who have every right to expect and demand that the processes of their National Government, as established in our Constitution, function in a timely and responsible manner.

We have now arrived at a point where speculation about criminal violations has been completely dismissed, and each member of this committee, and indeed, the full Senate, will be asked whether he or she believes Mr. Meese is otherwise qualified to be Attorney General. That decision, whether based on personal opinion, political philosophy, or any other consideration, can be expressed in a vote on this nomination.

Therefore, out of attention to our duty as Senators and out of decency to this nominee, we will press forward on this matter and come to a decision, one way or the other, without any further delay.

The distinguished Senator from Delaware, the ranking member of this committee, Senator Biden.

OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator BIDEN. Thank you, Mr. Chairman.

Welcome, Mr. Meese. I am sure you would rather not be here again, but welcome.

I can say on behalf of the minority, we have no intention of delaying this process. I am sure you will not be surprised to hear that we are as anxious to get it over with as you are—or, maybe not quite, but close. So there will be no delay on our part.

But on the other hand, there will be a series of questions, hopefully thorough, and hopefully to the point, that in fact should, in our view, in my view, be asked of you or any other nominee for this august post of Attorney General.

I have had the occasion, not only as other members of the committee, to be here during the previous series of hearings, but also on one occasion, at your request, to speak with you about these hearings and where we go from here. And I come to this hearing this morning with an open mind. I do not believe that the only question, though, is whether or not you have violated any criminal statute. The reason my mind is still open with regard to whether or not you should be confirmed as Attorney General is that I think there are a number of questions that remain open. It is not your fault they remain open, but nonetheless they remain open.

Whether or not you will have my vote, quite frankly, as I told you in our private meeting, will depend totally upon how you respond to these questions. My questions will concern three general areas.

First, I want to assure myself that you will exercise sound judgment in enforcing the Constitution and the existing Federal statutes, and that you will restrain any ideological impulses that you might have that would lead you to adopt policies that might very well depart from vigorous protection of civil rights and civil liberties. In short, I believe we have an obligation in our advise and consent function to assess your willingness and your ability to carry out the oath of office, to defend the Constitution and faithfully execute the law.

The second area that I will pursue is that I want to know how you propose to organize the Justice Department in pursuing your duties as Attorney General, assuming you are confirmed, especially with regard to the criminal justice system. Specifically, I am going to ask you questions, and I want to be assured and be sure that you will implement the provisions of the new crime bill, including the requirement to commit the necessary budget and manpower and to oblige the relevant Federal agencies to participate and cooperate in the Comprehensive Anti-Drug Program for which the new law makes you responsible.

And the third area, and the most contentious, I might add, is, notwithstanding the findings of the Stein report, I believe there are questions of ethics which still must be resolved. I think it is generally understood that the Stein report cleared you of criminal charges. But Mr. Stein expressly denied and declined to determine whether or not your actions constituted a breach of ethics. That is the committee's job.

There are three areas in particular that I think may rise to the level of constituting serious ethical problems. They concern your financial relationship with John McKean; your promotion to colonel in the Army Reserve, and the sale of your California home as arranged by Thomas Barrack.

I also feel it is important to understand how you will handle any additional indebtedness—and I acknowledge this is a catch-22 situation you find yourself in—but how you will handle any additional indebtedness that might arise out of the $720,000 legal fees from your attorney.

And finally, I think this committee has an obligation to fully find out what happened with respect to the Office of Government Ethics' staff report or staff memorandum on whether your actions violated current executive branch ethical standards. That is not something you can resolve for us, but we have had a discussion, and the chairman and I are going to join with other members of the committee in requesting that that report be made available for this committee.

And I might say that I question whether some of the ethical allegations that have been invoked against you are relevant. I think some of them are overly technical; I think, in fact, some of them are perhaps unfair. But I do believe there are a sufficient number of concerns, at least from where I sit, that warrant a full and thorough explanation by you. And, absent an explanation that satisfies my judgment, you would not have my vote on confirmation.

I should note parenthetically that we throw around the phrase ethical standards here, as if there is some immutable natural law written in the heavens defining what constitutes ethical conduct. But what I am going to pursue on some of these matters are things like whether or not you appreciate, at a minimum, how other people might view actions you took which you believe to be perfectly ethical.

I am a little concerned that you might have the view: "What is this all about? I cannot possibly understand why anyone would be upset." I am concerned that you may have the view that you believe that those who are raising questions in and out of Government about your conduct and practices with regard to your finances are merely doing so as a consequence of political vendettas, or disagreement with your ideological disposition which is different from theirs. In fact, I am going to be asking you as we go into this hearing how you perceive the criticisms that have been raised against you and, in retrospect, whether or not you would do some of the things you have done over again.

For example, I wonder what you would do as Attorney General if a young prosecutor within your office, within the Attorney General's Office, the Criminal Division, found himself or herself with a file on their desk to determine whether or not to bring a case against a bank and a loan officer with whom he or she had an outstanding debt that was outstanding not only in the sense that it had not yet been paid, but outstanding in that it was delinquent. Would you not expect that young attorney to say to his superior, "I should not handle this file. Why does not so-and-so? You make the judgment who handles."

These are the kinds of issues that I want to get into with you in determining how you plan on conducting the Office and what your ethical standards are as they relate to the conduct of that Office.

But in fact, Mr. Meese, on the record it seems to me that at a minimum, in some of these instances, you exercised bad judgment. Whether or not bad judgment is sufficient to preclude you from being Attorney General is a question that remains to be seen. However, I intend to be as thorough as I am capable of being and will refrain from making any decision on how I am going to vote on you until the entire hearing is concluded.

In concluding in my opening statement, it is my view that these hearings are not being conducted simply to review the Stein report. We are here to conclude the hearings that began last March, and consequently, all matters pertaining to your qualification for the office of Attorney General will remain open to inquiry.

And I hope that these hearings will provide both you and those who oppose your nomination an opportunity to make a full and fair presentation of the case on all the matters that are before us and have been before us, and that we can conclude this matter expeditiously and, as the chairman says, get on with the ultimate vote as to whether or not you should or should not be Attorney General.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Maryland, Mr. Mathias.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. Thank you, Mr. Chairman.

This matter has been before the committee for so long and has become so complex that I think it might be useful to back up for just a minute and recall what it is we are about to do.

The American people need to hire a lawyer. The Senate is in the position of the old family friend whose advice and counsel is being sought. We stand in the most responsible and the most uncomfortable of situations, because our advice may determine the choice. But in fact, we are limited to a single option—the option of up or down, yes or no.

So we ought to review what qualifications we have to consider. The American people need a lawyer who knows the law, or at a minimum, knows where to find it. The American people need a lawyer who is experienced and knowledgeable. The American people need a lawyer who is objective and impartial. The American people need a lawyer who is not only able to bear glad tidings, but is also able to be candid and honest and open as the bearer of bad news.

We have to keep in mind that the nominee is the President's recommendation, but if confirmed he will not be the President's lawyer; he will be the Nation's lawyer. It will be his duty to tell the President when he thinks he is wrong, and to tell the Nation when he thinks that is the case.

Of course, Mr. Chairman, as you know in your long experience, this is not the first time we have been presented with this kind of issue. There are many precedents. I recall that a dozen or so years ago, the Senate denied confirmation to Clement Haynesworth to be a Justice of the Supreme Court. I was a member of this committee at that time, and I do not think that any member of this committee thought that Judge Haynesworth was corrupt—not one. But he had permitted his personal affairs to appear to have an impact on his judicial duties, and the Senate denied him a seat on the Supreme Court because the appearance of impropriety might adversely affect the Supreme Court and the administration of justice.

Now, on the other hand, the Senate confirmed Griffin Bell, who later served with distinction as Attorney General, and notwithstanding the opinion of some of the members of this committee that his earlier career gave the appearance of bias.

So the issues before the committee do not present case of first impression. We shall be judged not only by what we do, but also by what we have done in the past. The importance of this appointment is underscored by Judge Simon Sobeloff's assessment of the office of Attorney General. Judge Sobeloff observed that the power of the Supreme Court is limited to deciding the cases brought before it. It is the Attorney General who decides what the Supreme Court will decide—at least in the area of public issues.

Now, I am confident, Mr. Chairman, that the committee and the Senate will rise to this challenge. Our duty does not end with this hearing. We have a continuing oversight responsibility, and so we have a vested interest in making the right decision.

Thank you, Mr. Chairman.

The CHAIRMAN. Since you mentioned Judge Haynesworth, I feel in all fairness I should make this statement. He was not confirmed by the Senate. Mr. Mansfield, who was the majority leader at that time, the Democratic leader, I understand later made a statement that he probably made a mistake in not voting for him. Several other Senators who voted against him have since realized they did make a mistake, and have so said.

The distinguished Senator from Massachusetts, Mr. Kennedy.

Senator KENNEDY. I would be glad to yield to Senator Biden for a brief comment, if I could.

Senator BIDEN. Mr Chairman, when I mentioned that this committee is joining in a letter to have a copy of that staff memorandum from the Office of Government Ethics, I want to make clear that the request we are going to make is that that be made public, that not only we have it made available, but that it be made public and available to the public, generally—and that you and I had agreed to join in such a letter, and one is being prepared at this point at the request of the committee, and that the committee will join in that, also.

The CHAIRMAN That is correct.

The Senator from Massachusetts, Mr. Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Thank you, Mr. Chairman.

We are here to hear from the nominee this morning, and I look forward to that opportunity. I want to say at the outset that I am a believer that a President is entitled to wide discretion in terms of being able to choose his Cabinet. There certainly are limitations, and we have constitutional requirements to exercise our judgment in meeting that criteria. I think all of us are very mindful of the fact that Mr. Meese has been one of the closest advisors to the President of the United States and a close friend, and has been very much involved in the policy-shaping over the period of the past years. And we acknowledge that at the outset.

As my colleagues have indicated, there have been issues and questions that have been raised that will be reviewed during the course of these hearings on the ethical questions which have been brought up, which I know that the nominee will address during the course of the hearing.

As the nominee knows, my very great concern about the role of Attorney General is not only meeting the basic requirements for approval by this committee and by the Senate that have been outlined by my colleagues earlier, but whether the office of Attorney General and in this case, the nominee, will be in reality and be perceived as being the people's lawyer. We have, I believe, made very substantial progress over the period of the last 20 years in trying to reduce the barriers of discrimination against minorities in our society, against women in our society, against the elderly, against the poor, against the handicapped in our society. And over the period of the last 4 years, I think that we have seen a rather significant retreat on that fundamental commitment. There may be those who differ, but at least that is my perception of actions by this administration—in its reluctance to support an effective Voting Rights Act, by the actions on Bob Jones, by the decision to intervene in the *Grove City* decision, by the assault on legal services, on the types of individuals that are appointed to the judiciary.

And there is a real question in my mind, Mr. Meese, right at the outset of these hearings whether, given your association with those decisions, and given your own view of whether you can be perceived as being the people's attorney, whether you are going to really enforce those laws to the full effect of those laws, and whether those people who really need an Attorney General in our society—the wealthiest individual and the powerful corporation may not, but there are millions of people who do—are going to be able to look to you as being someone who is going to be standing in their corner over the period of the next 4 years.

We will have an opportunity to get into those policy questions and judgments, and I look forward to your response. I know this comes as no surprise to you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I will just make this statement, that the very questions that the Senator from Massachusetts mentioned were raised in the election, and I think the people settled that.

The distinguished Senator from Nevada, Senator Laxalt.

OPENING STATEMENT OF SENATOR PAUL LAXALT

Senator LAXALT. I thank the chairman.

After many months of agonizing scrutiny—and it has been that—after all the investigative work done by this and other committees, after half a year of study by a meticulous independent counsel and his staff, it seems to me that we have succeeded only in demonstrating what those of us who know Ed Meese well have realized all along: That Ed Meese is an honorable and principled man who, at great personal expense, has devoted a lifetime of service to his country.

A ferocious and unprecedented search into any and every aspect of his life has failed, in my opinion, to unearth even a shred of evidence that this man ever designed to use public office for private gain. What we have seen, rather, is the reverse: A good man who, along with his family, has sacrificed at every turn in order to serve the public interest and who, unfortunately, has been pilloried for doing so.

But if there has been one benefit, Mr. Chairman, of this extraordinary confirmation process, it is that we are now intimately familiar with every detail of every event from which any drop of poisonous innuendo has been squeezed.

Let us, therefore, take advantage of the real facts which have been compiled at so high a price. Let us examine in these hearings not vague and abstract hypotheticals; let us instead work, if still necessary, with the conclusions of the independent counsel, which are grounded in hard fact. Appearances seen through partisan eyes may become distorted; it is reality that we are after.

I hear time again, and we have heard discussed time and again, that appearances should govern. Never. Never should appearances govern when the hard facts are available, as they are in this case. It will be the obligation of each member of this committee, Mr. Chairman, to vote on what he knows to be the character and abilities of the nominee. It would be the height of irresponsibility, in my judgment, to avoid making a substantive personal judgment by hiding behind a gossip standard hinged upon the views of some theorized doubter who might differ with our own informed conclusions. Our very system of government is jeopardized if we permit allegations we know to be false nevertheless to disqualify honorable men and women from public life.

I hope, therefore, that this hearing will focus, as it should, on Ed Meese's experience and qualifications, and on his ability to assist in carrying out the programs that the citizens of this country have so strongly signaled they desire. Mr. Meese's legal and managerial experience makes him singularly well qualified to be our next Attorney General. His background provides a perfect mix of practical and theoretical law enforcement training. He not only served as a deputy district attorney for 8 years and as legal affairs secretary to the Governor of California, but also taught at Berkeley and at the University of San Diego Law School. He has been the chief administrative officer of a successful Fortune 500 company, the director of the Center for Criminal Justice Policy and Management, and counselor to the President. And as you know, Mr. Chairman, Ed Meese was a tremendously strong and helpful supporter of the President's Comprehensive Crime Control Act, which you, and I, and Senators Biden, and Kennedy, and so many others on this committee worked to enact last year.

In my judgment, rarely if ever have we had a nominee better qualified to serve as Attorney General than we have in Ed Meese.

He has served this land very well indeed, and I look forward to his playing an historic role as Attorney General over the next 4 years.

I thank the Chairman.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. Mr. Chairman, Mr. Meese, Senator Wilson, members of this committee, of all of the nominations that come before the Senate, that of Attorney General is unquestionably one of the most important. No other position in our Government, with the possible exception of a Justice of the Supreme Court, is so crucial to maintaining the American system of justice.

The Attorney General is not only the Nation's most powerful law enforcement officer, but a symbol of our dedication to the ideal that we are a government of laws, not of men.

As Attorney General, Elliot Richardson showed his devotion to that ideal when he resigned rather than fire Watergate Prosecutor Archibald Cox and yield to President Nixon's attempt to subvert the law.

As Attorney General, William Rogers showed his devotion to that ideal when he ordered U.S. marshals to Little Rock to enforce civil rights laws over the objections of defiant state officials.

As Attorney General, Edward Levi showed his devotion to the rule of law when he sought to curb illegal actions of CIA officials who had held themselves above the law.

And as Attorney General, Nicholas deB. Katzenbach showed his devotion to that ideal when he ordered a halt to the FBI's illegal wiretapping of American citizens.

History has taught us—and the actions of these men reaffirm—that a government of laws only functions if those governed believe that the laws are being fairly enforced.

There is no room for bowing to the privileged few, no room for self-serving decisions. For, in the final analysis, the motivation for all Americans to act within the law stems at heart from the knowledge that the laws are fairly and impartially enforced. If Americans' faith in that principle is eroded by actual or perceived impropriety by public officials, then the motivation to act within the law is likewise eroded.

The real question before us is whether Mr. Meese, by his own actions or his lack of actions, has demonstrated the integrity and sensitivity required to administer the laws fairly and impartially.

Will his confirmation be a beacon for those dedicated to equal justice, or will it send a signal that we in the Senate will reward ethical malfeasance and impropriety with a Cabinet position?

Based on the extensive record already compiled by this committee and the report of the independent counsel, I do not believe that Mr. Meese should be confirmed as Attorney General.

I do not come to this conclusion lightly. I am reluctant to vote against the confirmation of any Presidential nominee. Nor is my decision based on political or partisan grounds. Rather, the facts lead me inevitably to conclude that Mr. Meese lacks the integrity of character, the evenhandedness of purpose, and the sensitivity to ethical values required of the Attorney General of the United States.

Further, Mr. Meese has not shown the breadth of legal knowledge or the record of fairness and compassion for Americans of all races and economic status. I believe these are all essential ingredients for that individual designated to uphold the ideal that everyone is equal under the law.

The record developed by the committee and the independent counsel speaks for itself. That record shows the following:

Mr. Meese accepted money intended as reimbursement for moving expenses even though he had been advised by his own counsel and the Department of Justice that such a payment was probably unlawful. He initiated a sham transaction designed to disguise the purpose of the payment and then misled this committee by insisting that he had paid all his moving expenses out of his own pocket.

He received substantial financial favors from numerous individuals and then supported their nominations to high Government posts. In so doing, he directly violated longstanding White House ethical regulations that carry the force of law. He compounded this ethical lapse by failing to disclose financial ties at the time he participated in decisive meetings when his benefactors were chosen for their jobs.

He accepted a promotion to colonel in the Army Reserve even though he had been informed by the Secretary of the Army that high-ranking officers felt that the promotion smacked of favoritism. Then he testified before this committee that he neither sought nor had knowledge of such special treatment. In fact, he went so far as to blame the Army for the fact that he received special treatment.

Whether intentionally or through a remarkable degree of negligence, Mr. Meese has repeatedly failed to comply with Federal financial disclosure laws. And time and time again—in fact, on over 50—50—separate occasions in the Stein report, and 79 occasions before this committee, Mr. Meese could not recall, did not remember, or forgot documents or events. And many of these memory lapses related to material facts that go to the heart of whether Mr. Meese broke laws or acted improperly.

I do not quarrel with the Independent Counsel's conclusion that Mr. Meese did not commit an indictable offense. But since when is not being indicted a qualification for a Cabinet post?

We are charged with evaluating Mr. Meese's fitness to serve as Attorney General. That inquiry necessarily involves more than an inquiry into whether Mr. Meese committed any crimes. Indeed, the Independent Counsel made it clear that he was not passing judgment on Mr. Meese's overall conduct.

Said Mr. Stein: "I submit no comment on Mr. Meese's ethics and the propriety of his conduct or an evaluation of Mr. Meese's fitness for office."

Mr. Stein went on to say: "I am compelled to limit my inquiry to the sole question of whether the evidence warrants prosecution under Federal criminal statutes. There is sufficient interest in those other issues to support an expectation that they will not remain unexplored by those who will strive to do so free of all bias and prejudice." End of quote.

In fulfilling the responsibility outlined by Mr. Stein, we simply cannot be guided by the principle that the failure to have violated any criminal laws provides an affirmative basis for confirmation. In short, Mr. Meese may not have committed any crimes, but his repeated willingness to shut his eyes to improper conduct, his insensitivity to and violation of ethical standards, and his disregard for financial disclosure and conflict of interest regulations lead me to believe that he has failed to meet the standard we must apply for the nation's most powerful law enforcement officer.

Mr. Meese, my concerns are shared by millions of Americans. There is a strong public perception that you have not displayed the high ethical standards we have come to demand of Attorneys General.

Listen to the St. Louis Post-Dispatch:

> The issues of judgment, ethics and sensitivity to propriety—in short, the question of character—remain unsettled. The Nation's highest law enforcement officer must have impeccable credentials on these matters, and here, the verdict of the Stein Report has not vindicated Mr. Meese.

Listen to the Beaumont Enterprise:

> Too many questions remain from the investigation into Meese's conduct for him to serve in a post that requires absolute trust.

Listen to the Los Angeles Times:

> There may indeed be nothing illegal about a Government official conferring public rewards on those who have done him private favors, but, unproscribed or not, such actions are ethically indefensible * * * an ethical blind spot is a major infirmity in an Attorney General.

Listen to the Cleveland Plain-Dealer:

> If the Attorney General of the United States should be a person whose credentials should be above reproach—and that is what the job demands—then Meese is the wrong individual for the post. His casualness with ethical standards places a disagreeable scent in the public nostrils. He does not deserve Senate confirmation.

Finally, listen to the Norfolk Virginian-Pilot:

> We defended Mr. Meese a year ago when the President first nominated him, because the opposition seemed petty and politically inspired * * * but as revelations about Mr. Meese's behavior continued, a pattern became apparent: people who helped Mr. Meese and his wife out of financial trouble got cush government jobs * * * Even if Mr. Stein himself did not comment on Mr. Meese's ethics, the details unearthed in his investigation confirmed that Mr. Meese was guilty of poor judgment and has shown little regard for the ethical standards that should govern the actions of one who aspires to be the nation's top law enforcement officer * * * To put it simply,

Says the Norfolk Virginian-Pilot:

> He sets a bad example.
>
> Unless political cronyism and ethical blindness are prerequisites for Attorney General, the Senate should reject the President's unfortunate choice.

I have a number of other editorials here that echo the views I have just read, I would point out that many of the following papers endorsed President Reagan: the Palm Beach Times, the Chicago Tribune, Newsday, the Charlotte Observer, the Syracuse Herald-Journal, the Buffalo News, the Tacoma News Tribune, the Scottsdale Daily Progress, the Boston Globe, the Des Moines Register, the Rochester Democrat and Chronicle, the High Point (NC) Enterprise, the (Columbia, SC) State, the Kansas City Star and Times, the Wilmington (VT) Valley News, the Capital Times of Madison, WI, the Durham Herald, the New York Times, the Sacramento Bee, the Austin American Statesman, the Kalamazoo Gazette, the Middletown Connecticut Press, the St. Petersburg Times, the Valley News of West Lebanon, NH, the Cape Cod Times, the New London (CT) Day, the Bristol (CT) Press, the Chicago Daily Herald, the Parsons, Kansas Sun, the Hays (KS) Daily News, the Hartford Courant, Today (Cocoa, FL), the Charleston (WV) Gazette, the Seattle Times, the Davenport (IA) Quad-City Times, the Kentucky Messenger-Inquirer, the New Republic, the Vancouver (WA) Columbian, the Tucson (AZ) Star, the Toledo Blade, and the Cedar Rapids (IA) Gazette.

I ask, Mr. Chairman, that all of these editorials be placed in the record at this point.

The **Chairman**. Without objection, so ordered.

[The following were received for the record:]

These are editorials in opposition to the confirmation of Edwin Meese, III, as Attorney General. They are from the:

Vancouver, Washington Columbian

The Sacremento Bee

Tucson, Arizona Star

Kalamazoo, Michigan Gazette

Los Angeles Times

Charleston, West Virginia Gazette

The Hartford Courant

St. Petersburg, Florida Times

Austin, Texas American Statesman

Middletown, Connecticut Press

Bristol, Connecticut Press

Toledo Blade

Cedar Rapids, Iowa Gazette

The Tacoma News Tribune

The Buffalo News

The Scottsdale, Arizona Daily Progress

Boston Globe

Norfolk, Virginia Virginian-Pilot

Des Moines Register

Columbia, South Carolina The State

High Point, North Carolina Enterprise

Kansas City Star & Times

Wilmington, VT *Valley News*

Madison, Wisconsin *The Capital Times*

Durham, North Carolina *Herald*

Rochester, NY *Sunday Democrat and Chronicle*

Hyannis, Massachusetts *Cape Cod Times*

New London, Connecticut *Day*

Cocoa, Florida *Today*

Chicago, Illinois *Herald*

Parsons, Kansas *Sun*

Hays, Kansas *News*

Seattle, Washington *Times*

The Burlington Free Press (Vermont)

Cleveland, Ohio *Plain Dealer*

Davenport, Iowa *Quad City Times*

Beaumont, Texas *Enterprise*

Newsday

Charlotte Observer

Syracuse *Herald Journal*

The New York Times

P. B. Times

Messenger-Enquirer

Chicago Tribune

St. Louis Post-Dispatch

The New Republic

Vancouver, Washington Columbian
December 23, 1984

Cox' Meese fight is futile but still worth the try

There's really no way that liberals and civil libertarians are going to prevent U.S. Senate consent to the nomination of Edwin Meese III as attorney general. Nonetheless, they are right to make the attempt.

As Meese's chief adversary said the other day, the nominee has been shown to be "blind to the ethical standards and obligations of a public official."

That adversary — no stranger to such standards and obligations — is Archibald Cox, now chairman of Common Cause, formerly special Watergate prosecutor and nemesis of Richard Nixon.

President Reagan insists that he will have Meese as his chief law-enforcement official and head of the Justice Department. Reagan's smashing electoral victory reinforces the traditional argument that a president should have the Cabinet he wants. The Senate is dominated by supporters of Reagan — or at least those who dare not oppose him. So nothing is surer than renomination of Meese and Senate consent to that renomination.

So why does Cox persist? Why is he joined by the Leadership Conference on Civil Rights, an organization described as an umbrella for more than 150 civil rights groups?

Quite apart from their concerns about Meese's sloppy bookkeeping and soft attitude on influence dealing, they are concerned about his authoritarian approach to law and conservative views of civil rights. By establishing a firm adversarial position to Meese now, they can hope to improve his tenure.

Reagan has moved beyond politics. He works now for history's judgment, and he must be aware that opponents such as Cox will help write his administration's history. Meese is Reagan's man, and he cannot relish smudging Reagan's record by offensive public behavior in high office.

In the face of Reagan's electoral mandate, any opposition to his wishes may seem futile. In a democratic society, however, opposition is necessary however vain.

The Sacramento Bee, 1/14/85

Ed Meese's Ethics

In June and December of 1981, an accountant named John R. McKean arranged unsecured loans totaling $60,000 for presidential counselor Ed Meese. In October 1981, Meese supported McKean's nomination to an unexpired term on the U.S. Postal Service Board of Governors; in January 1983, with interest on the loans overdue, Meese supported McKean's nomination to a full term on that board.

In August 1982, attorney and real estate developer Thomas J. Barrack Jr. assisted Meese and his wife, Ursula, in the sale of their California home, a complicated deal that included a personal loan of $70,000 Barrack made to the buyer of the house and that Barrack later forgave. A week after the deal was closed, a meeting was arranged between Barrack and members of the White House personnel office, including Meese, and three months after that Barrack began work as deputy secretary of the interior, a post for which Barrack had Meese's approval. It appears that at no point in that process did Meese disclose that he was a beneficiary of Barrack's considerable financial assistance.

In a period lasting through 1982, Meese received a series of loans from the Great American First Savings Bank that eventually totaled $402,000. Meese was substantially in arrears on several of those loans and failed to answer a number of requests from the bank to sign a modification agreement extending the loan. In the same period, Meese helped arrange senior administration posts for four officers and former officers of the bank, among them Gordon Luce, the bank's chairman and chief executive officer (member of the President's Commission on Housing and, later, alternate delegate to the U.N. General Assembly); Marc Sandstrom, bank vice president and general counsel (board member of the federal Legal Services Corp.) and Clarence Pendelton, a member of the bank's board of directors (chairman of the U.S. Commission on Civil Rights).

On Jan. 7, 1981, Edwin W. Thomas, a friend of the Meeses, lent Ursula Meese $15,000 to purchase stock. Virtually at the same time, Thomas became Edwin Meese's White House assistant and, later, administrator of the San Francisco office of the General Services Administration. Subsequently, Thomas' wife and Thomas' son also obtained federal jobs. Meese failed to report the loan, even though he filed a required federal financial disclosure report less than two months after his wife had received it.

In each of these instances, and in several others, among them Meese's frequent failures to recall significant documents, conversations and transactions, a special prosecutor found no evidence to sustain criminal charges. But the special prosecutor avoided as beyond his mandate any comment on Meese's ethical or moral fitness to be attorney general of the United States.

Ronald Reagan wants Meese to be attorney general and, had it not been for those charges of impropriety, Meese probably would have been confirmed last spring. Now, with the special prosecutor's report in hand and the election over, Reagan has resubmitted Meese's name to a Republican-dominated Senate that's expected to confirm him. Meese, says the president, has been "vindicated." But the report does nothing to dispel the charges — indeed confirms their accuracy — other than to say Meese is not an indictable crook.

A cynic may point out that, if confirmed, Meese would be just another in a long line of political hacks and presidential cronies who, at one time or another, have served as attorney general. But while that may speak to his lack of experience, if not his lack of competence, it does nothing to raise his ethical stature. And in this area he may well be uniquely unqualified.

The attorney general is the nation's chief law enforcement officer and as such — to quote former Watergate Special Prosecutor Archibald Cox — the office requires a person who can "symbolize the highest standards of honor, integrity and freedom from favoritism or other self-interest." With a record like his, how could Meese direct an investigation into charges (for example) into high-level favoritism by others in government, or assure anyone else, in or outside government, that if such allegations came to his attention he would even begin to understand them? To quote Cox again: "Meese may have intended no wrong. His past conduct shows, however, that he is blind to the ethical standards and obligations required of a public official." The fact that he is not subject to criminal prosecution himself does not save his stunted ethical sense from serious doubt, and it does not qualify him to be the attorney general of the United States.

Tucson, Arizona Star, 12/22/84

Questions of character

Meese might not be crooked, but his lapses are critical

The report of a special investigator concludes that Edwin Meese is not a crook, at least not an indictable one. But that declaration does not make Meese a fit candidate for attorney general.

Meese keeps repeating that he has a poor memory for detail. He also seems to have a poor grasp of ethics in government. Neither failing is desirable in an attorney general, yet the Senate seems ready to confirm Meese's nomination to become the nation's head lawyer.

Senate debate on President Reagan's nomination of his chief adviser is scheduled to resume in late January or early February. Meese would succeed William French Smith, who resigned to work on the president's re-election campaign.

The special investigator, Jacob A. Stein, reported in September that he found "no basis" for prosecuting Meese for any violation of federal criminal law. Stein refused to evaluate Meese's fitness for the office because, he said, it was beyond the scope of what he was appointed to do.

However, Stein concluded that Meese had displayed a "lack of ethical sensitivity" and a "blindness to abuse of position" as he directed federal appointments on the basis of favors done for the Reagan campaign and in the way he accepted a promotion without merit in the Army Reserve.

Stein also was assigned to investigate Meese's failure to disclose a $15,000 interest-free loan made to Meese's wife by a Reagan ally. Meese himself received payment from a trust established to finance Reagan's transition to office in 1981.

Meese pleaded poor memory on all counts. Stein found no felonious intent in Meese's actions. But that does not make those small lapses in honesty irrelevant to Meese's appointment as attorney general. That fine point was well made this week in a letter to all senators from Archibald Cox, the chairman of Common Cause, the citizens' lobby.

Meese's lapses are rather enough to reject his nomination as attorney general. It is too critical an appointment to be dictated by Senate partisanship.

Kalamazoo, Michigan Gazette, 1/3/85

A year hasn't erased Edwin Meese's flaws

Nearly a year has passed since President Reagan nominated Edwin Meese to succeed William French Smith as attorney general. He was not a good candidate for the job then, and he isn't now. Meese's primary qualification, as far as we can see, is his strong and long personal relationship with the president, which may serve him well in his role as presidential counselor, but is inadequate for the nation's top law-enforcement officer.

The case against Meese is just as strong now as it was last year when independent counsel Jacob A. Stein investigated his tangled financial affairs. While Stein found nothing to warrant prosecution, he also was silent on Meese's ethical standards, saying there was nothing in his instructions about addressing those issues.

That silence, however, was not golden. The Senate Judiciary Committee, expected to hold confirmation hearings later this month, should give close attention to Stein's demurral that he would leave it to others to determine Meese's fitness to serve as head of the Department of Justice.

The committee should also consider what an independent counsel of an earlier era, Archibald Cox, had to say about Meese's fitness to serve. Cox, now chairman of Common Cause, knows a thing or two about ethical conduct; he was the first Watergate special prosecutor, the one President Nixon ordered fired.

In a press conference recently, Cox said Meese's conduct – finding government jobs for people who helped him out of financial difficulties and finagaling a promotion in the Army reserve – was evidence "that he is blind to the ethical standards and obligations required of a public official."

Cronyism is practiced to some degree by most administrations, usually to their dismay. President Reagan would do well to forgo renominating Meese as attorney general – but he won't. The Senate would do well to deny confirmation – but it probably won't. Only eight nominees for Cabinet positions have been rejected in the Senate in the history of the nation.

A ninth would be in order. But that is probably too much to ask.

Los Angeles Times, 12/31/84

Los Angeles Times

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Meese: the Wrong Man

Last February President Reagan nominated his longtime associate and counselor, Edwin Meese III, as attorney general. Late next month the Senate Judiciary Committee is expected to hold confirmation hearings on that nomination. This will be the second time around for Meese and the committee, the first hearings having been suspended earlier this year so that an independent counsel could investigate allegations of criminal wrongdoing by the nominee.

The counsel, Jacob A. Stein, a respected Washington lawyer, concluded last September that there was no evidence to support criminal prosecution of Meese on any of the 11 charges raised against him. But Stein said that he would leave it to others to determine whether Meese had adhered to the standards of ethics and propriety that his White House position required and that his potential role at the head of the Justice Department demands.

The ethical questions regarding Meese for the most part involve money and patronage. In half a dozen cases Meese arranged federal jobs for people who had either directly or, through the institutions that they served, indirectly helped the Meese family financially. These favors included cash loans—among them an interest-free loan of $15,000 to Meese's wife that he failed to disclose, as the law requires.

An additional favor to Meese came from the Army, which at his request approved a highly irregular transfer from the retired to the ready reserve. That move opened the way for Meese to enjoy more exalted rank and the benefits that accompany it. The Army later acknowledged the impropriety of the transfer, and Meese withdrew to the retired reserve. But he retained the promotion and benefits that he received as a result of the unwarranted move.

There may indeed be nothing illegal about a government official conferring public rewards on those who have done him private favors, but, unproscribed or not, such actions are ethically indefensible. They are particularly so for a person who seeks to become the nation's chief law-enforcement officer. The Senate, in the view of many of its leaders, has no taste for continuing the fight over the Meese nomination, and his confirmation as attorney general for now seems assured. But Senate approval will neither answer nor eradicate the questions that have been raised about proper behavior. An ethical blind spot is a major infirmity in an attorney general. In our view it is a disqualifying one.

Charleston, West Virginia Gazette, 12/28/84

Meese mess

THE ATTORNEY general of the United States should be a person of unquestioned integrity. Such individuals are available. Numberless lawyers and politicians are honorable.

Why, then, is the White House determined to hand the nation's top legal office to a card-carrying member in the Reagan administration's sleaze gang?

Although a special prosecutor concluded that Edwin Meese committed no crime for which he could be indicted, his conduct wasn't honorable. He got loans from at least five Californians. Some cash he neglected to report, as demanded by law. Worse, five lenders were appointed by the White House to federal posts.

Former Watergate prosecutor Archibald Cox, now chairman of Common Cause, says Meese's failure to object to federal jobs being offered to private benefactors shows him to be morally unfit to be attorney general.

Why do so many appointees to this key federal office have feet of clay?

The present officeholder, William French Smith, had to return a dubious $50,000 bonus provided by a corporation, had to drop a tax shelter that netted him a $66,000 deduction for a $16,500 investment, and his round-the-world drug enforcement junket may have set a new record for squandering while traveling on supposed government business.

Former Attorney General Richard Kleindienst was convicted of misleading a Senate committee, got a $250,000 "finder fee" from a crooked insurance broker for arranging Teamsters union business and temporarily lost his law license.

Before him, Attorney General John Mitchell went to prison for Watergate evils.

Attempts to block Meese's nomination haven't been helped by a discovery about his chief attacker. Sen. Howard Metzenbaum led the opposition in the first round of Senate hearings on Meese's confirmation. Now it turns out that Metzenbaum took a $250,000 finder fee for making a phone call to expedite sale of the Hay-Adams Hotel in Washington. He eventually returned the money, but his standing as a moral accuser has been undercut.

Other senators, however, should continue the fight. This society doesn't need any more tainted attorneys general.

When Meese's name comes up for Senate confirmation, we urge West Virginia's new team, Sen. Robert C. Byrd and Sen. J.D. Rockefeller IV, to cast their votes in keeping with a view expressed by retiring Sen. Jennings Randolph:

Meese may be fit for some federal jobs — but not for the sensitive post of top legal officer.

The Hartford Courant, 1/13/85

Edwin Meese, Again

Soon after President Reagan's inauguration for a second term, the Senate will again take up the nomination of Edwin Meese III for attorney general. At that point, a rigorous test of the Senate's good judgment will begin.

Confirmation hearings were postponed last year by a special prosecutor's investigation of 11 allegations against the nominee. Mr. Meese's advocates, including the president, imply that the report of the five-month inquiry eliminated all questions about his fitness to head the Justice Department.

That, however, is not the case. In fact, the reverse is true: The report made it impossible to argue credibly that Mr. Meese is a wise choice for attorney general.

The investigation by special prosecutor Jacob A. Stein dealt with just one subject: whether there was enough evidence of criminal wrongdoing by Mr. Meese to warrant prosecution. He concluded that there wasn't.

Mr. Stein wasn't told to review other possibly illegal behavior by the nominee, such as violations of civil laws or federal regulations. Nor was he directed to evaluate Mr. Meese's ethical sensitivity or other character traits bearing on his fitness to be attorney general.

The special prosecutor said only that Mr. Meese shouldn't be prosecuted for the behavior in question. The Senate must avoid getting caught up in the attempt by the White House to use the report to sweep the remaining questions under the rug and Mr. Meese into office.

Senators with open minds and high ethical standards who can lay aside party loyalty will find it extremely difficult not to conclude that, while Mr. Meese may be innocent of criminal conduct, he is an unacceptable candidate for a position of such special public trust.

Few senators may find time to read the lengthy Stein report. Fortunately, there's an excellent 37-page review of the report prepared and recently released by Common Cause, the non-partisan citizens' lobby.

Common Cause, which opposes Mr. Meese's nomination, discussed in detail six of the 11 allegations investigated by the independent counsel. They involve these matters:

- Two nominations of accountant John R. McKean to the U.S. Postal Board of Governors, and two loans from Mr. McKean to Mr. Meese, who was on a White House committee that recommended Mr. McKean for the board.
- High federal jobs given to Thomas J. Barrack Jr., an attorney and real estate developer who helped Mr. and Mrs. Meese sell their home in California when they were in deep financial trouble.
- Mr. Meese's irregular promotion to colonel in the Army Reserve (allowing him a higher pension) and his equally irregular change from retired to active status, together with the nomination — after Mr. Meese's urging — of the chief of the Army Reserve to a second term.
- Three loans to the Meeses — and a generous tolerance of their failure to repay them on time — by a bank, four of whose current or former officials were given presidential appointments.
- A loan from a friend of the Meeses, Edwin W. Thomas, to Mrs. Meese, and the federal jobs obtained for Mr. Thomas, his wife and son. Also, Mr. Meese's failure to list the loan in his disclosure statements.
- Mr. Meese's acceptance, as reimbursement for "moving expenses," of money left in a 1980 presidential transition fund despite the possibility that the reimbursement was illegal. Also, Mr. Meese's later having the records changed to show that his check was for "consulting fees."

Perhaps in none of these cases was Mr. Meese intentionally involved in anything wrong. The extent of his personal involvement isn't clear, thanks largely to his memory lapses. But time after time he should have known that what was occurring would raise strong suspicions that he was using public office for private gain. As a federal employee, he was subject to rules prohibiting acts that could create even the appearance of such impropriety.

There are many ethically sensitive, distinguished and broadly experienced attorneys whom the president could have asked to serve. Instead, he picked Mr. Meese.

By tradition, presidents are given a relatively free hand in making executive branch appointments. But when the job is as important as that of attorney general, and when the president uses such poor judgment in choosing, an exception to the rule is in order.

St. Petersburg, Florida Times
December 20, 1984

Common Cause's lost cause?

There are compelling reasons why Edwin Meese, the presidential counsellor, should not be allowed to become attorney general of the United States. Someone who has been so openly contemptuous of civil rights is implausibly cast as head of the department that's supposed to enforce civil rights. Someone who so often has been blind to the appearance of conflict of interest on his own part is an unacceptable candidate to police the ethics of others.

But Washington reasons in strange ways. Meese, having submitted to thorough scrutiny by an independent counsel under the Ethics in Government Act, was found to have done nothing for which he could be prosecuted criminally. The independent counsel, Jacob A. Stein, took pains to point out in his report that he wasn't passing judgment on Meese's ethics. The Senate, however, seems to have eyes only for the other parts, which say in effect that Meese is not a crook. His confirmation is said to be assured.

THAT WOULD set a shabby standard for one of the nation's highest and most sensitive offices. Meese's conduct, however immune to prosecution, smells of chronic cronyism, a conveniently feeble memory and a galling insensitivity to the urgent need to keep the President's office above suspicion.

Stein's report did not deny that Meese's wife had borrowed $15,000, to play the stock market, from one of Meese's White House employees, Edwin W. Thomas. He said simply that the loan had nothing to do with subsequent federal patronage appointments for Thomas and Thomas' wife and son. Yet Meese forgot to report that outstanding loan on his financial disclosure forms. Stein reasoned that Thomas had many other friends of long standing in the Reagan White House, including the President himself, and could have gotten jobs without Meese's help. Even so, Meese should have reported the loan. One might understand how a rich man might overlook such a debt. But Meese wasn't rich. The circumstances may not spell criminal conduct, but they raise profound questions about Meese's attentiveness to important details.

STEIN ALSO acknowledged that Meese had involved himself with the appointment to the Postal Service Board of Governors of a California man who had provided him with a personal loan, and with other appointments to four men connected with a bank that had carried an overdue mortgage on Meese's California house. Meese disclosed those transactions properly. But why didn't he also disqualify himself from having anything to do with those appointments? If his failure to do so does not require Meese to stand in a prisoner's dock, neither does it qualify him to run the Justice Department.

Happily, there are still people who believe that high public officials should be held to the highest standards of conduct. Common Cause, the public affairs lobby, announced this week that it will oppose Meese before the Senate Judiciary Committee. Washington wisdom says that's a lost cause. But the chairman of Common Cause is a person who knows something about matters like that. He is Archibald Cox, the one-time Watergate special prosecutor who preferred to be fired rather than compromise on principle. History will remember who was right that time. History will remember who was right this time, too, regardless of the immediate outcome.

Austin, Texas
American-Statesman 1/1/85

Meese not qualified

President Reagan is expected to once again nominate Edwin Meese as attorney general when Congress convenes. But the presidential counselor is no more fit for that high office now than before he was "cleared" of violating federal law after a five-month investigation. Meese's nomination should be rejected.

A year ago, Meese was nominated to be attorney general. Within three months, because of information revealed in the press and during hearings on his nomination, a preliminary investigation of possible criminal charges against the nominee began. Later, an independent counsel was selected to investigate thoroughly.

In September, the counsel's report was released. It concluded there was "no basis" for indicting Meese on criminal charges. Mr. Reagan claimed the report was a "vindication" of Meese.

But, as Common Cause chairman Archibald Cox has said, the report is no such thing. A Common Cause review of the counsel's report notes that it carefully refused to state that the evidence does not substantiate the charge of moral turpitude or to make an evaluation of Meese's fitness for public office.

Indeed, the conclusion that can be taken from the counsel report is that Meese has very little sensitivity to the sort of ethical standards to be expected of an attorney general.

Middletown, Connecticut Press, 12/26/84

The Meese Appointment

When the Congress reconvenes, one of the first matters it will take up will be the confirmation hearing of Edwin Meese as attorney general. While Meese has been investigated and not found to be indictable, his judgments leave much to be desired. Archibald Cox, the Watergate prosecutor who is now the chairman of Common Cause, has commented on the report of the Independent Counsel, and he says, "The uncontradicted evidence in the report shows that Mr. Meese repeatedly participated in appointing to high government positions individuals who had done or were doing him financial favors or who were affiliated with an organization that had done him financial favors or who were affilated with an organization that had done him financial favors." Cox has spelled out his objections to confirmation on the following grounds:

"(a) After receiving a $40,000 loan arranged by John McKean to relieve his financial distress, Mr. Meese supported the nomination of McKean to fill a vacancy on the Postal Board of Governors before the four-member Senior Staff Personnel Committee of which Mr. Meese was a member. Later, after receiving not only a further loan but also Mr. McKean's agreement to defer $12,000 in interest payments, some of which were in arrears, Mr. Meese as a member of the four-member Senior Staff Personnel Committee, joined in approving McKean for a position providing a longer term on the Postal Board of Governors desired by Mr. McKean.

"(b) On January 7, 1981, Mrs. Meese, with Mr. Meese's approval, received an unsecured, interest-free $15,000 loan from Edwin Thomas, a close friend, which Mr. Meese omitted from his financial disclosure report although plainly required. Thomas went to work under Mr. Meese in last January as Assistant Counsellor to the President.

"(c) While he was heavily in debt to Great American First Savings Bank, had received forbearance of monthly payments on some of his loans, and was in default on one of his loans, Mr. Meese participated in decisions to name Bank officials to government positions — again without disclosing the danger of conflicting interests.

"(d) While Mr. Meese was suffering financial difficulty partly because of inability to find a buyer for his California house, Pendleton James, who had recently left his position as White House Director of Personnel, asked Thomas Barrack to provide Mr. Meese with assistance. Barrack quickly arranged a very favorable sale. At the same time Barrack was pursuing a federal appointment under Pendleton James's sponsorship. The evidence, while not conclusive, makes a convincing showing that Mr. Meese must have known that Barrack was interested in a federal job. Mr. Meese was also sent a copy of letters sent by Mr. James to five Cabinet secretaries using his Meese's name in pressing Mr. Barrack for appointment. Without revealing his link to Mr. Barrack, Mr. Meese was one of the four-member Senior Staff Personnel Committee that recommended Mr. Barrack for Assistant Secretary of Commerce.

"(4) In each of these instances Mr. Meese violated Executive Order 11222, which proscribes conduct: '... which might result in, or create the appearance of... giving preferential treatment to any organization or person;... losing complete independence or impartiality of action....' To accept financial assistance and thereafter join in appointing one's benefactor to public office creates 'the appearance of ... giving preferential treatment' and of 'losing complete independence or impartiality of action.' "

This kind of behavior raises a number of questions. It undermines public confidence in the office, it sets a poor example for others, and it raises the question of whether the individual himself, in dealing with those to whom he is indebted, can even be sure himself that he is being even-handed. Quite apart from the fact that Meese has no broad legal experience or high attainments at the law, his major problem is that he has been blind to the ethical conduct required of a high government official. He should not be confirmed as attorney general, no matter how firm a friend of the president he may be.

Bristol, Connecticut Press
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Clearing The Meese Mess

After months of delay, Senate Republicans appear confident that presidential adviser Ed Meese can be confirmed as attorney general. Without doubt, the confidence is well founded.

Still, rejection would be best for the country. There are several reasons that Meese should be denied the office, and no amount of political maneuvering can change that.

Forget his assertion that poor people stand in soup kitchen lines because they want "free food." Technically, he's correct. If they could afford to pay for their food, you can bet they would. Meese suspects that these are people out to rip off the system. In fact, they're those who have been ripped off by the system — who literally cannot afford a meal. But a warped perspective on hunger in America doesn't disqualify a candidate for attorney general.

This is, after all, the man who once referred to the American Civil Liberties Union as a "criminals' lobby." Granted, Ed Meese is entitled to an opinion. All the same, his words indicate a woeful inability to understand the principles inherent in the Bill of Rights. Safeguards exist not to protect criminals, but to protect everyone. One searches Meese's record in vain for a sense that he has grasped that argument.

Then, too, there was his maneuvering to win a tax exemption for Bob Jones University — the segregated, theological academy based in South Carolina. As a presidential aide, Meese was perhaps following the wishes of the White House. Still, such exemptions violate both law and precedent. Does the nation need an attorney general who is willing to do that?

Meese's backers are so confident partly because their nominee has been "cleared" by a special prosecutor investigating charges that he traded in high-level appointments for President Reagan's political friends. Still, there are indications that he was less than honest in hearings before the Judiciary Committee. Besides, it's indisputable that the Reagan appointment policy has rested upon a base of patronage.

None of this means, of course, that Ed Meese will be rejected. It does suggest strongly, though, exactly why he should not be allowed to become attorney general.

Peter

8 TOLEDO Blade 1-8-85

No Sure Thing

It is not enough for a man who is attorney general to have a sign saying I have been found not to be a crook.

— Archibald Cox, Common Cause chairman

ALTHOUGH it is a few weeks before Edmund Meese's nomination for U.S. attorney general will be resubmitted to Congress, opposition is already beginning to line up.

One such group is Common Cause, represented by Mr. Cox. The organization has little use for the [illegible] of Mr. Meese from his post of White House adviser to attorney general. The 250,000-member organization is dissatisfied with what it regards as the limited perspective of a special prosecutor, who concluded earlier this year that Mr. Meese's conduct on several occasions, involving allegations of awarding jobs to persons who provided him with financial or other assistance, did not violate any criminal laws.

There are plenty of reasons for the Senate to examine the questions that Mr. Meese's conduct have raised. Common Cause has a point when it asserts that it is not enough to have an attorney general who has not been formally accused of committing a crime but whose background is questionable. After all, the job to be filled is that of the top law-enforcement officer in the nation, not some minor, penny-ante bureaucratic post.

Senators should keep that in mind and resist any temptation to rush the nomination through simply to allow President Reagan to have his way.

The Meese mess

If he were not a leading Reagan crony, if he were not on record as opposed to many of the ideas and programs that enamor liberal Democrats, Edwin Meese III would be attorney general of the United States today. Instead, after being the subject of criticism and exhaustive investigation for the better part of a year, Meese appears to be targeted for another round of sniping before he assumes that title. Let's hope it is a brief round. It's time to make the best of a bad situation by confirming his appointment and going on to other things.

Meese has long been a favorite target of Reagan critics, and for them, the timing of his nomination to succeed William French Smith could not have been better. It came in an election year when what Democrats called the "sleaze factor" was much in the news. Meese was made to order with a background that included suspicious-looking loans from people who later received White House favors, special treatment from the Army Reserve, and financial dealings that were either unreported or misreported. With Howard Metzenbaum of Ohio leading the charge, the Senate put the nomination on hold pending an investigation by an independent counsel. The counsel's report, issued in September, found no evidence of criminal misconduct.

That wasn't enough for Metzenbaum, however, or for Common Cause, the self-proclaimed "citizens' lobby." Both said last week that Meese's insensitivity to the appearance of conflicts of interest was enough to disqualify him from serving as attorney general.

They have a point. At best, Meese comes out of this as someone with a dreadful understanding of what is required of a public servant for appearances' sake. Nitpicking? No. It is one thing to insist that an appointee be free from flaws. It is quite another to claim that the ability to stay out of jail qualifies someone to be the nation's top law enforcement officer. Meese is not by any stretch of the imagination the best person for the job. It would have been better both for the office and for Mr. Reagan to have nominated someone else.

But he didn't, and while questioning the president's wisdom in making the appointment it is important to keep in mind that it is his appointment — his mistake — to make. While the Senate has a responsibility to reject an appointee who is unqualified, it should not reject one just because he is not the best available choice. Barring any last-minute revelation of wrongdoing, Meese should be confirmed.

The Tacoma News Tribune, January 4, 1985

Meese doesn't deserve job

There's a strong chance taxpayers will get stuck with all or part of the huge legal bills presidential counselor Edwin Meese ran up defending himself in an ethics investigation.

But that doesn't mean they should get stuck with Ed Meese as U.S. attorney general, too.

A judge will rule soon on Meese's request for government reimbursement of his legal bills, incurred during a special prosecutor's five-month investigation of allegations against Meese. A new federal law allows for such payment.

The special prosecutor concluded in September there was no basis for filing criminal charges against Meese, but that was not enough to dispel the ethical questions that cloud Meese's record. Among other things, Meese "forgot" for four consecutive years to report a $15,000 personal loan from a friend he subsequently hired as his White House deputy.

Archibald Cox, former Watergate special prosecutor and chairman of the Common Cause citizens' lobby, noted that Meese violated a federal executive order barring even the appearance of conflict of interest by public officials. After examining the report on Meese, Cox concluded recently that Meese repeatedly "participated in appointing to high government positions individuals who had done or were doing him financial favors . . ."

While Meese may have intended no wrongdoing, Cox added, "his past conduct shows, however, that he is blind to the ethical standards and obligations required of a public official."

Cox's criticisms of Meese stem from a well-known scrupulousness rather than partisan politics. It's unfortunate that President Reagan chose to ignore this and instead resubmitted Meese's nomination to the Senate yesterday. The nation's top legal officer should be someone of spotless reputation; Edwin Meese doesn't fit the bill. The Senate should act accordingly.

The Buffalo News, January 8, 1985

Meese Is Ill Suited For Top Justice Post

ALTHOUGH NOT surprising, it is nonetheless disappointing that President Reagan has again nominated Edwin Meese III, a long-time Reagan political adviser and now a presidential counselor, to become attorney general of the United States.

The president had originally selected Mr. Meese to succeed Attorney General William French Smith a year ago. Then questions arose about earlier financial dealings between Mr. Meese and several friends who later received appointments to federal jobs.

A lengthy investigation by an independent federal counsel cleared Mr. Meese of any wrongdoing and, in the wake of that, the president announced that he planned to renominate him. This he has now done. Sen. Robert Dole, the majority leader, wants to "move as quickly as possible" to confirm the appointment.

But this is a nomination the Senate should approach with care. There may be many responsible federal positions that Mr. Meese would be well suited to fill. But attorney general, the nation's chief law enforcement office and exemplar of sensitivity to the strictest ethical standards in government, is not one of them.

In his investigation, the special independent counsel found "no basis" for criminal prosecution of Mr. Meese but did not evaluate his fitness for the office of attorney general. That is a task for the Senate, and it should not be hurried. The report did not dispute the fact that on several occasions Mr. Meese supported for various federal posts persons who had granted him financial favors in the recent past. In one instance, he backed for a position on the Postal Board of Governors a man who had arranged a $40,000 loan for him. In another, a longtime friend who gave Mrs. Meese a $15,000 interest-free loan went to work soon afterward on Mr. Meese's White House staff.

Archibald Cox, chairman of Common Cause, pointed up the troubling aspects of those personal-public relationships in observing that "a bare minimum of public integrity requires the public official who has accepted financial favors to take no part in choosing his personal benefactors for government jobs or in otherwise doing business with them on behalf of the government."

In opposing Mr. Meese's nomination, Mr. Cox, a former solicitor general and former Watergate special prosecutor, asserted that no one can effectively serve the high standards of the top Justice Department position "who, even though not guilty of a crime, has left the appearance of repeatedly mixing government appointments with his private financial affairs."

There is another reason to question this nomination. In wrapping up the Watergate investigation in 1975, the special prosecutor's office recommended that future presidents should not nominate as attorney general, nor the Senate confirm, "a person who has served as the president's campaign manager or in a similar high-level campaign role." That projects a standard not always followed in past administrations. Even so, Mr. Meese was campaign director for the president in the 1980 national campaign, and it would be prudent to avoid even the appearance of mixing politics and leadership at the Justice Department.

For these reasons, the Senate would be justified in turning down Mr. Meese's nomination as attorney general.

The Scottsdale (AZ) Daily Progress, January 9, 1985

opinion

Round 2 for Meese

President Reagan has nominated his friend Edwin Meese to be the next attorney general of the United States. In preliminary Senate hearings last summer, Meese was charged with violating the law by using his position as presidential counselor to do favors for friends who had helped him financially.

After a lengthy investigation, special counsel Jacob Stein reported that Meese had not actually broken the law. The report, however, did not present an opinion on the ethical conduct of the nominee.

That issue now will confront the Senate Judiciary Committee. Meese will have to explain why he believes it is proper to grant favors to persons who have helped him financially.

In addition, Meese will have to explain his promotion to colonel in the Army Reserve when he lacked the normal experience requirements. And he must explain why he then recommended the chief of the reserves for an unusual second term.

The attorney general should have a broad legal background as a practitioner. Meese's legal background is limited and is largely political.

But the heart of the matter is whether the nominee has the moral qualifications for the job. He should be totally above suspicion and incorruptable, for the office sets a moral standard for the nation.

Based on his past record, Meese fails these ethical tests. His nomination should be turned down by the Senate.

Boston Globe
12/22/84

Meese's defeat: a common cause

Archibald Cox, chairman of Common Cause, and his organization are to be admired for taking on the uphill fight to get the Senate to reject President Reagan's expected nomination of Edwin Meese as the nation's top law enforcement officer.

Meese is a man of questionable integrity and is not fit to be Attorney General of the United States. He has been accused of helping to arrange positions in the Reagan Administration for persons from whom he received financial assistance. Meese denies any wrongdoing. The facts are clear – Meese received financial help from five persons, all of whom subsequently got jobs in the Administration.

An independent counsel was appointed to investigate the charges last spring after Meese was nominated to replace Attorney General William French Smith. The counsel, Jacob A. Stein, found no basis for criminal prosecution of Meese. He did not comment on the propriety of Meese's behavior or on his fitness to be Attorney General.

Meese was not vindicated by the Stein report. If anything, the report proved that Meese's accounts of his financial machinations were less than forthright. Senators should read and take heed of a 37-page analysis of the Stein report by Common Cause.

Reagan says he intends to nominate Meese again when Congress reconvenes. The Senate Judiciary Committee is expected to begin hearings on the nomination late next month.

The Administration's disregard for facts and ethics, while inexcusable, is well-known. A series of resignations and embarrassments involving Reagan officials has done nothing to deter the President from demonstrating loyalty to persons who have proved to be lacking in integrity.

There is no excuse, however, for the Senate to stand aside while President Reagan continues to be blind to the implications of his appointments. Representatives and senators must join Common Cause and Sen. Howard Metzenbaum of Ohio in encouraging Meese to seek employment elsewhere.

The Virginian-Pilot, Norfolk, Virginia
January 1, 1985

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The Virginian-Pilot

Editorials

Reagan's poor choice

One of the new year's political hangovers is President Reagan's continuing desire to have White House aide Edwin Meese confirmed as U.S. attorney general. A president ought to be able to have his choice of Cabinet members — as long as the choice possesses the basic qualities of good judgment and a sharp mind needed in the top echelons of the federal government. Unfortunately, on the evidence at hand, Mr. Meese fails that test.

We defended Mr. Meese a year ago, when the president first nominated him, because the opposition seemed petty and politically inspired. But as revelations about Mr. Meese's behavior continued, a pattern became apparent: People who helped Mr. Meese and his wife out of financial trouble got cushy government jobs. A man who loaned Mr. Meese $40,000 became a member of the Postal Board of Governors; a man who gave Mrs. Meese an interest-free, unsecured loan went to work as an assistant to the president; a man who arranged the sale of Mr. Meese's house at favorable terms was recommended by Mr. Meese for assistant secretary of commerce. There was more, and Mr. Meese, when questioned about the incidents, could never remember the facts of the cases.

Because of questions raised by these revelations, the Senate Judiciary Committee suspended Mr. Meese's confirmation hearings last year until a special prosecutor, Jacob Stein, could investigate. Mr. Stein found "no basis" for prosecuting Mr. Meese under criminal statutes, but declined to deal with the ethical questions involved. However, even if Mr. Stein did not himself comment on Mr. Meese's ethics, the details unearthed in his investigation confirmed that Mr. Meese was guilty of poor judgment and had shown little regard for the ethical standards that should govern the actions of a public official — especially one who aspires to be the nation's top law-enforcement officer.

Federal Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employers," which has been in effect since 1965, prohibits activity by federal officials — including White House aides such as Mr. Meese — which "... might result in, or *create the appearance* [emphasis added] of using public office for private gain; ... giving preferential treatment to any organization or person; ... or affecting adversely the confidence of the public in the integrity of the government."

Mr. Meese certainly has — on more than one occasion — engaged in activity that created appearances that affect adversely the confidence of the public in the integrity of the government. To put it simply: He sets a bad example.

The second set of hearings on his confirmation begin soon. Unless political cronyism and ethical blindness are prerequisites for attorney general, the Senate should reject the president's unfortunate choice.

The Des Moines Register, December 26, 1984

At least he's no criminal

Archibald Cox is right about Edwin Meese: The Senate should vote "no" if, as expected, President Reagan renominates Meese for attorney general. The fact that an independent counsel cleared Meese of any crime in connection with accepting favors from people who later received federal appointments does not mean he is fit to be the nation's highest-ranking law officer.

Cox, the chairman of Common Cause, learned a lot about ethics — or lack of ethics — in government when he was Watergate special prosecutor. He said last week that the report of independent counsel Jacob Stein showed Meese to be "blind to the ethical standards and obligations required of a high public official." We expressed a similar view when Meese was first proposed for the attorney generalship some months ago.

The Stein report showed that Meese, as counsel to the president, "repeatedly participated in appointing ... persons who had either done or were doing him financial favors," said Cox. Apart from his ethical failings, Meese is a mediocrity with few visible qualifications for the job except his friendship with the president.

Unfortunately, the Senate seems not to have the stomach for a nomination fight, so the nation is likely to get an attorney general who, for all his shortcomings — well, who at least is not a criminal. We can be thankful for that small favor.

The State, Columbia, South Carolina
January 6, 1985

Quiet Meese reviving

NO prominent political figure has had a lower profile in Washington, D.C., in the past six months than President Reagan's close friend and counselor, Edwin Meese III. But he will resurface soon.

Mr. Meese was chosen last winter by the President to be U.S. attorney general, replacing William French Smith, who wants out. But the appointment, which must be approved by the U.S. Senate, snagged on severe criticism about alleged deals in which Mr. Meese's friends got government jobs after lending him money.

Mr. Meese asked for and got an investigation of 11 allegations against him by a special prosecutor, who reported last September there was "no basis ... for bringing of a prosecution ... for violation of a criminal statute." But the special prosecutor had "no comment on Mr. Meese's ethics and the propriety of his conduct or an evaluation of Mr. Meese's fitness for office."

Senate hearings on the appointment, suspended last March, will resume soon after Congress convenes. Mr. Meese will be opposed by the so-called people's lobby, Common Cause, and a coalition of other groups on grounds that he is not fit to serve as attorney general.

President Reagan intends to stand by his old friend, and Washington insiders say the Senate is likely to approve the appointment. The Senate only rarely turns down a President's choice of a Cabinet member.

Here is another situation where the public figure is blameless of criminal conduct, but there is dark suspicion about his ethical behavior. There are many distinguished and capable lawyers who would splendidly fit the office of attorney general, and we wish the President would choose one of them. Mr. Meese is not the best man for the job.

High Point, North Carolina Enterprise, 12/27/84

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Powerful Foe For Meese

Soon after the first of the year the new U.S. Senate will have to deal with the matter of Edwin Meese. Meese is the nominee of President Reagan to be attorney general of the United States. An independent counsel selected by the administration has concluded that there is no basis for indicting Meese on criminal charges which surfaced earlier this year and raised questions about his suitability to take such an important post.

Rises now Common Cause, the self-designated citizens' lobby, to say that it will actively oppose the Meese confirmation. A fact not to be overlooked is that Archibald Cox, who ten years ago headed the independent prosecution of Richard Nixon for the sins of Watergate, is now chairman of Common Cause.

In a recently issued statement, Cox minced no words in declaring his belief that Meese is unfit for the appointment, because of his various financial dealings with individuals which were followed by appointments to comfortable federal jobs as well as for his apparent wheeler-dealing to fatten his own future military pension probabilities.

Cox makes much of the language in the independent prosecutor's report. That report did say that nothing was found to form the basis for the bringing of a prosecution. It did not refute the charges of moral turpitude and it did not make an evaluation of Meese's fitness for public office.

Cox insists that the "uncontradicted evidence ... shows that Mr. Meese repeatedly participated in appointing to high government positions individuals who had done or were doing him financial favors or who were affiliated with an organization that had done him financial favors." In various cases, he added, "Meese violated Executive Order 11222, which procribes conduct: "... which might result in, or *create the appearance of* ... giving preferential treatment to any organization or persons ..."

And Cox concludes, "Mr. Meese may have intended no wrong. His past conduct shows, however, that he is blind to the ethical standards and obligations required of a public official."

These are sentiments which we voiced several months ago. The U.S. Senate will strike a blow for higher ethical conduct if it will reject Edwin Meese for the job of attorney general.

Kansas City Star & Times, January 4, 1985

Not Mr. Meese

Presumably the landslide re-election of President Reagan assures the appointment of Edwin Meese III, a long-time Reagan political ally and currently presidential counselor, as attorney general. Yet the thought remains: His clearance of criminal wrongdoing by an independent counsel does not necessarily mean Mr. Meese is qualified to be the chief law enforcement officer of the land.

In fact, if adherence to ethics rules and setting the proper tone and example for this sensitive office are considered, Ed Meese should not be U.S. attorney general.

While the extensive investigation of Mr. Meese did not turn up an indictable offense, the independent counsel's report notes conduct outside the rules that apply to federal officials. Both a presidential order and federal regulations prohibit use of official position for private advantage or even the appearance of such conduct.

Among other acts, the report shows that contrary to rules Mr. Meese did not include in his financial disclosure statement an interest-free $15,000 loan to his wife from a friend who a short time thereafter was hired to work under Mr. Meese in the White House. Mr. Meese also participated in decisions to appoint people to government jobs who had helped him during a time of financial distress.

The attorney general should be sensitive, not only to violations of the letter of the law but to upholding the spirit of the law. By his actions, Mr. Meese has demonstrated either an inadequate knowledge of the rules, a poor memory of written correspondence and conversations about his outside financial dealings, or refusal to abide by well-known standards of conduct. In any case, Mr. Meese lacks the credibility to serve as attorney general.

Wilmington, VT Valley News
January 3, 1985

Opinion

Ed Meese Returns

The wrong kind of resignation will soon bring the saga of Edwin Meese 3rd to a sorry end. No, Meese won't do the country a favor and leave the Reagan administration. Instead, the U.S. Senate will resign itself to Meese's ethical shortcomings and approve his appointment as attorney general of the United States.

How quickly America forgives and forgets.

When President Reagan nominated Meese a year ago to be attorney general, liberals were immediately outraged. As one of Reagan's top advisers, Meese had made a name for himself as a callous hard-liner. The nomination came only a few weeks after Meese had offended most sensibilities by saying that the recession-struck people in charity soup kitchens were only there to cash in on free food.

Even conservatives started to worry about putting Meese in charge of the Justice Department, however, once the Senate began its confirmation hearings. Each day brought forth a new story about a friend who had loaned Meese money and then received a government job. By March, Republican senators were beginning to squirm: If they supported Meese, voters would question their ethical standards, and if they opposed him, they would be denouncing their own president's ethics.

Just when the controversy was reaching its peak, the public investigation went private, thanks to the appointment of a special prosecutor to see if Meese had broken any laws. The investigation took five months, during which Meese kept an extremely low profile. The prosecutor concluded that there wasn't enough evidence to indict Meese on any charges. That, of course, is not the same as clearing him of any wrongdoing. The country has to presume Meese's innocence, but it should note that the report said others would have to decide if Meese's conduct had been ethical.

That might have been a worthwhile campaign issue, but Walter Mondale never got voters interested in the "sleaze factor." Rather than push the Senate to approve Meese's nomination before the election, the president kept Meese out of the spotlight for the duration of the campaign.

So now he's back, waiting for confirmation. Reagan has had his big win — despite the sleaze factor — and senators can be forgiven for concluding that voters don't care about ethical standards in the Cabinet. Those few senators willing to take on the administration will probably focus on the budget — an issue where their efforts may still make a difference. Even Meese's opponents are probably resigned to his victory.

It remains true that Meese is unfit for the job. His vision of justice does not extend to the poor, as shown by his repeated attempts to dismantle the Legal Services Corporation. His faith in civil liberties is meager, as shown by his support of strong-arm tactics to detect government leaks and censor government employees. His work as director of Reagan's 1980 campaign will make it difficult for Meese to bring sufficient political independence to the Justice Department.

The Senate won't care, though, because Meese has beat the system. He has kept quiet and let the passage of time make him dull, forgetable, noncontroversial. Unfortunately, the Justice Department needs a leader who is more than unindictable.

The Capital Times
Madison, Wisconsin
January 2, 1985

The case against Ed Meese

Edwin Meese III

THE QUESTION of whether Edwin Messe III should be this country's next attorney general essentially comes down to one of whether you believe that high public officials ought to have high ethical standards.

The detailed investigations conducted of Meese in the past year clearly demonstrate that ethical sensitivity is not a high priority with him. It is true, an independent counsel found no basis for bringing criminal charges against Meese for the numerous instances in which people who helped him financially wound up with cozy government jobs. But even that independent counsel, Jacob Stein, refused to get drawn into a discussion of Meese's ethics or of his fitness for office.

The political realities of January 1985 are that Meese probably will win his long-awaited Senate confirmation as attorney general. Only eight Cabinet nominees have ever been rejected by the Senate, the last in 1959 because there were, interestingly enough, ethical concerns about President Eisenhower's appointment of Lewis Strauss as secretary of commerce.

But political realities have a way of changing. The White House may claim that the independent counsel "vindicated" Meese, Majority Leader Robert Dole may argue that Meese has been held "hostage" long enough by the Senate, but Common Cause, the citizens' lobby group, has done a remarkable job of focusing on the real problem with the Meese nomination:

This man is ethically blind.

What Meese did

CONSIDER a few of the more notorious incidents that illustrate Meese's ethical insensitivity:

John McKean — McKean, president of an accounting firm, arranged a $40,000 unsecured loan for Meese after White House Deputy Chief of Staff Michael Deaver suggested the financially strapped Meese contact McKean. That was in June 1981. In July, the White House Senior Staff Committee — which includes Meese and Deaver — was supposed to decide on a nominee for the Postal Board of Governors. The committee deferred a decision, as one participant said in his notes, "until Deaver and Meese come back with a recommendation."

That recommendation was John McKean. Neither Meese nor Deaver ever mentioned that McKean was their accountant and a benefactor. Deaver never said McKean was about to arrange a loan for him. Then in December 1981, Meese called McKean at home and arranged to borrow another $20,000 — a loan that McKean made the same day by writing Meese a check from his personal business account.

When McKean sent Meese a bill for the first year's interest, Meese did not respond. In September 1982, while the interest was still unpaid, McKean wrote to Meese that he was interested in a full, nine-year term on the Postal Board. On Nov. 8, 1982, McKean agreed to defer the interest payments until 1983. A week later, the Senior Staff Committee — with Meese's active support — approved renominating McKean for a nine-year term.

Thomas Barrack — This attorney and real estate developer helped Meese sell his house in La Mesa, Calif. Later, he was named deputy undersecretary of interior and then was offered a job as assistant secretary of commerce for trade and development.

Meese apparently was less directly involved in landing these jobs for Barrack than in the McKean case. But Meese was aware that his friend and Barrack's patron, Pendleton James (former director of the Office of Presidential Personnel) was pushing Barrack for a job and was using Meese's name to add weight to the job search. Meese later joined in approving Barrack's appointment to his sub-Cabinet post.

Military promotion — After Meese told his friend General William Berkman, Chief of Army Reserve, that he wanted to return to active status in the Army Reserve, Berkman's liaison officer arranged the transfer in a way that the Army inspector general later concluded was improper. Berkman's officer also arranged for Meese to be promoted to colonel outside the normal channels. Although Meese did not get directly involved in these maneuvers, he knew they were going on and did nothing to stop them.

After the changes in status, Meese lobbied on behalf of reappointing Berkman to another term with Defense Secretary Casper Weinberger and Army Secretary John Marsh.

Bankers — Four officials of the Great American First Savings Bank — which had made three loans on favorable terms to the Meeses in 1981 and 1982 — wound up with presidential appointments in the Reagan administration. Meese participated in the decisions to recommend them for those appointments.

Memory — Throughout the investigation by the independent counsel, notes Common Cause, Meese repeatedly said he could not remember significant events or actions. As Common Cause said, "Even accepting the honesty and candor of Mr. Meese's statements of forgetfulness, they confirm the other evidence of unawareness of, or indifference to, ethical standards required of public officials."

Why it matters

SO WHAT? you may ask. What difference does it make?

It matters because the public gets cheated when high government officials make decisions influenced by people who do them favors. It matters because that kind of favoritism undermines confidence in government. It matters because it sets an example for other government officials to do the same.

If this is true of any high government position, it is especially true of the attorney general. This person more than anyone should be sensitive to issues of ethical conflicts, proper behavior and impartiality. He should set the ethical tone for the whole administration, to say nothing of the attorneys who work for him. How will Meese possibly be able to do that?

SURELY THERE are other lawyers in this country who share President Reagan's conservative philosophy and yet who are sensitive to the ethical demands of high public office.

Meese is the wrong man for the job. The Senate should reject the nomination.

Durham, North Carolina Herald 1/12/85

Edwin Meese III Not Best Attorney General Nominee

Executive Order 11222 requires federal employees to maintain "the highest standards of honesty, integrity, impartiality and conduct" and to avoid "misconduct and conflicts of interest . . . through informed judgment."

Edwin Meese III, President Reagan's nominee for attorney general, is not a crook. But based on this executive order he is not a good choice to become the nation's top-ranking law enforcement officer.

Mr. Meese is one of Mr. Reagan's closest friends. He underwent a tough examination by an independent counsel, Jacob Stein, a prominent Washington attorney. Mr. Stein said in a 400-page report that there were no reasons to bring criminal charges against Mr. Meese.

So Mr. Meese was clearly exonerated from criminal liability of the allegations that he had used his position and accepted money to grant political favors.

He did not, however, come squeaky clean—at least not when one considers Executive Order 11222.

At best, he showed lack of good judgment when he accepted a $40,000 loan from San Francisco accountant John McKean, whom Meese approved for an unexpired term on the Postal Board of Governors. (Mr. McKean later arranged another loan for Mr. Meese and deferred interest payments on the $40,000).

The same can be said of Mr. Meese's approval of Los Angeles lawyer and real estate developer Thomas Barrack for two high-level government jobs. That came after Mr. Barrack arranged the sale of Mr. Meese's house, which had been on the market for 18 months, causing him serious financial hardship. Interestingly, the down payment on Mr. Meese's house was made by Ted Elkin, Mr. Barrack's friend and employee, using more than $83,000 of Mr. Barrack's money via a loan that Mr. Barrack later forgave.

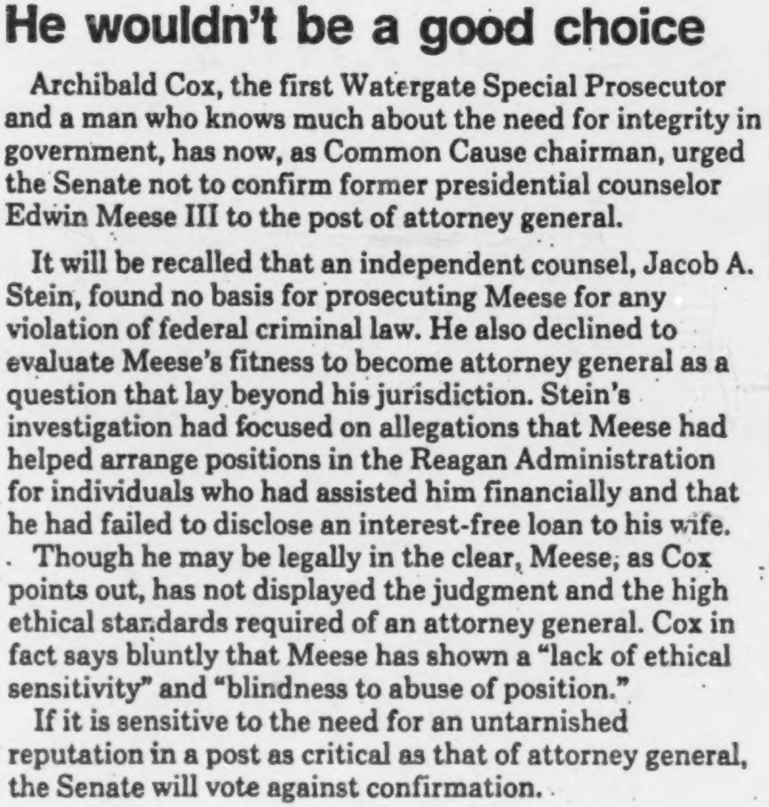
Questions have also been raised about Mr. Meese's promotion in 1983 from lieutenant colonel to colonel in the Army Reserve. The Army concluded, after an internal investigation, that the promotion was made "not on the basis of past military performance but rather on the basis of national prominence." While that's no terrible sin, it is worrisome that Mr. Meese later endorsed the reappointment of Army Reserve chief Gen. William Berkman, one of three Army officers who signed a section related to Mr. Meese's promotion.

The Stein investigation revealed other possible conflicts. While saying Mr. Meese was guilty of no criminal offense, Mr. Stein's report did leave distinct impressions: Mr. Meese was a man who was careless about his financial dealings, who could be justifiably criticized for cronyism, who might be considered sloppy in his legal interpretations on matters which affected him.

The job demands more courage and propriety that Mr. Meese has shown. The Stein report said nothing specifically about Mr. Meese's qualifications to serve as attorney general. That was not Mr. Stein's job. But the report clearly shows Mr. Meese lacks the judgment and mettle the job demands. ■

Rochester, NY Sunday Democrat and Chronicle

December 23, 1984



He wouldn't be a good choice

Archibald Cox, the first Watergate Special Prosecutor and a man who knows much about the need for integrity in government, has now, as Common Cause chairman, urged the Senate not to confirm former presidential counselor Edwin Meese III to the post of attorney general.

It will be recalled that an independent counsel, Jacob A. Stein, found no basis for prosecuting Meese for any violation of federal criminal law. He also declined to evaluate Meese's fitness to become attorney general as a question that lay beyond his jurisdiction. Stein's investigation had focused on allegations that Meese had helped arrange positions in the Reagan Administration for individuals who had assisted him financially and that he had failed to disclose an interest-free loan to his wife.

Though he may be legally in the clear, Meese, as Cox points out, has not displayed the judgment and the high ethical standards required of an attorney general. Cox in fact says bluntly that Meese has shown a "lack of ethical sensitivity" and "blindness to abuse of position."

If it is sensitive to the need for an untarnished reputation in a post as critical as that of attorney general, the Senate will vote against confirmation.

Hyannis, Massachusetts Cape Cod Times
December 30, 1984

In Our View

Catch 11222: The Meese affair

At the moment, the appointment of presidential counselor Edwin Meese III to the post of U.S. attorney general seems safe. For one thing, President Reagan is determined that his man will get the position. For another, an independent investigation has found "no basis" for Meese's prosecution for ethics violations. Rather like William Casey having been found "not unfit to serve" as CIA director.

Whether or not there is basis for prosecuting Meese on the charges the independent counsel investigated is largely beside the point — if that finding isn't questionable in itself. What Reagan loyalist Meese (Gov. Reagan's chief of staff from 1970 to 1974) lacks is the aura of integrity.

And, some recent attorneys general aside, integrity is a necessary qualification for a position that demands the absolute impartiality of the nation's number-one lawyer. Only such a person can build confidence in the even-handedness of law enforcement that is essential to democracy.

What are Meese's faults? Several. The independent counsel's report shows without question that, as counsel to the president, Meese repeatedly participated in the appointment of friends and financial supporters to important government positions. For example:

- John McKean, named at Meese's urging to the U.S. Postal Service's Board of Governors, had earlier arranged a $40,000, low-interest loan for Meese, and later agreed to defer $12,000 in interest payments owed by Meese.
- Edwin Thomas, who was named to the position of assistant counsel to the president early this year, granted a $15,000 unsecured, interest-free loan to Meese, who is now his boss. Furthermore, Meese failed to report the loan on his financial disclosure statement.
- Thomas Barrack, who arranged the sale of Meese's California house, was recommended for the position of assistant secretary of commerce. Meese, whose name was included among those proposing Barrack for the job, told no one of his connection with the man.

"In each of these instances," reports Common Cause, "Mr. Meese violated Executive Order 11222, which proscribes conduct . . . 'which might result in, *or give the appearance of* . . . giving preferential treatment to any organization or person . . . .' " Common Cause will lead the attack on the Meese nomination when it comes before the Senate next month.

The Meese affair concerns more than the fitness of the man himself. If he is appointed, the message will be implicit to others in federal government that with a certain amount of care, they are free to use their offices for personal gain.

"Toleration of the appearance of linking personal financial advantages with government appointments," said Common Cause chairman Archibald Cox, "is the beginning of a long downhill slide into major corruptions." Cox, who was Watergate special prosecutor, knows what he's talking about.

Earlier this year, a senior Justice Department official made this comment about the Meese nomination: "This is the danger when a president appoints a political crony. You can be sure that if the nominee had been someone not close to the president his background would have been thoroughly checked.

"There are a number of distinguished lawyers in this department," he said, "who believe the attorney general should himself be a distinguished lawyer. We feel the president could do better."

The Meese affair, with its implied violations of Executive Order 11222, continues. So do the dangers of cronyism. The battle is now largely Common Cause versus the White House. It is a contest that should be fought, because Meese certainly is not the man who would bring the mantle of honor and integrity to that important national office.

New London, CT Day, 12/24/84

Meese

A shoo-in in spite of himself

Unless lightning strikes, the Senate is likely to approve Edwin Meese III as attorney general. If it does, it will follow tradition by declining to defeat a president's nomination for the Cabinet. Not since 1959 was a nominee turned aside. Nonetheless, the Senate will be wrong.

Meese has demonstrated that he is insensitive to the ethical considerations that go hand-in-glove with high government office and particularly with the job of attorney general.

Common Cause director Archibald Cox, the distinguished former Harvard Law School professor, says naming Meese as attorney general will ignore evidence that the man disregarded conflicts and improprieties in his government service. Cox ought to know disrespect for ethical considerations when he sees them. As the lawyer first appointed special prosecutor for the Watergate affair, Cox was breathing down Richard Nixon's neck when the former president fired him.

Jacob Stein, the special counsel assigned to Meese's case, reported that he found no evidence that Meese violated any federal laws in his dealings in the government. But as Common Cause and Cox correctly point out, Stein did not address the ethical considerations in the case and did not answer the question whether Meese is fit to hold the nation's highest law enforcement post.

Regardless of the Senate's likeliness of approving Meese's nomination the arguments for turning him down are numerous and persuasive.

- Meese received aid from John McKean in obtaining $60,000 in loans and McKean subsequently was named chairman of the Postal Service's Board of Directors. As White House counsel, Meese has a major voice in patronage appointments such as the one McKean received.
- Bank officers who arranged $480,000 in credit assisting Meese to buy a new home in Washington before selling his house in California received federal jobs. They also allowed Meese to delay 15 months worth of mortgage payments on his loans.
- Thomas Barrack, a California real estate developer who in effect contributed $83,000 out of his own pocket so someone could buy Meese's $300,000 home in California, ended up as an assistant secretary of the Interior Department. Meese could not remember playing any role in the appointment of Barrack.
- Meese at first listed as moving expenses some $10,000 in trust funds arranged to provide transition money for Reagan administration officials as the president was taking office. But when apprised that the Justice Department probably would consider payment of such moving expenses illegal, Meese listed the money as consulting fees and reported them as income on tax returns.

Maybe Meese is being honest in saying there was no *quid pro quo* between him and people who made loans and later got federal employment. Maybe Special Counsel Stein was correct to believe Meese when he said he had lapses of memory in failing to report the interest-free loan and in not remembering conversations about patronage jobs for individuals who had helped him financially.

But even if the public stretches the point by believing Stein and Meese on the ethical considerations, it must conclude that Meese is a bungler. In short, he's hardly the kind of alert, thoughtful and ethically sensitive person most Americans want in charge of the Justice Department.

Cocoa, Florida Today, 12/22/84

Meese opposition grows

A highly respected former high official in both Democratic and Republican administrations has joined the ranks of those trying to persuade President Ronald Reagan to back away from his effort to name presidential pal Edwin Meese III attorney general of the United States.

So many people objected to the Meese appointment earlier this year that stormy hearings in the Senate Judiciary Committee were suspended to await a special report by independent counsel Jacob Stein.

The Stein report found no basis for prosecuting Meese for the violation of a federal criminal statute, but citizens lobby Common Cause says the evidence, "far from vindicating Mr. Meese, clearly shows that he repeatedly acted in violation of the ethical standards that should have governed his conduct."

This evidence, says Common Cause chairman Archibald Cox, shows that Meese "is therefore unfit to be attorney general."

Cox has impressive credentials as the former Watergate special prosecutor in the 1973 impeachment proceedings against Richard Nixon who ordered Cox fired in the famous purge of Oct. 20, 1973. Cox had been solicitor general before that in the Kennedy and Johnson administrations.

Common Cause leaders have promised a major campaign in an effort to block the Meese confirmation, but the president has shown no signs of weakening, says he plans to resubmit Meese's name to the Judiciary Committee early next year.

As we have stated here previously, we sincerely hope that members of that committee will not yield to pressure from the president on behalf of his longtime crony.

The Common Cause conclusion that Meese violated a 1965 executive order which prohibits actions which adversely affect the public's confidence in government is too serious a charge to be overlooked.

We cannot believe that there are not men or women available for this appointment who meet the "cleaner than a hound's tooth" requirements that should prevail for the chief legal officer of this nation.

Chicago, Illinois Herald
December 29, 1984

No Meese

One of the early items of business for the Senate after the Congress convenes Jan. 2 is likely to be President Reagan's renomination of Edwin Meese to be U.S. attorney general, succeeding William French Smith, and it will be anything but a routine confirmation.

In September Meese was cleared by a special prosecutor of any criminal wrongdoing, and the president indicated he would still push for Meese as attorney general if he were re-elected.

Meese may not have broken any laws, but he is tainted by actions that clearly demonstrate his insensitivity to the code of ethics that should govern those who hold high office. He apparently recognized no conflict of interest when he took part in appointing to federal positions people who had done him financial favors, and he accepted a military promotion that gave the appearance of receiving preferential treatment even though he had been warned about it by the Secretary of the Army.

We said earlier we believe President Reagan can find a better qualified person to be U.S. attorney general, and we suspect many in the Senate feel the same way. Pushing for Meese's confirmation can only further alienate those Republican Senators who already differ with Reagan on the budget.

Too many important issues need to be tackled, like tax reform, the deficit and immigration reform, for the Senate to waste time haggling over Meese. Reagan should look for someone else.

Parsons, Kansas Sun, 1/3/85
&
Hays, Kansas News, 1/2/85

EDITORIALS

Meese's modest qualifications

Archibald Cox, the high-minded Watergate prosecutor, says Ed Meese is unfit to be U.S. attorney general.

He's right, but not necessarily for the reasons he cites.

Cox is most concerned about Meese's "utter insensitivity to ethical standards."

That's a valid point. When ethics were ladled out, Meese was playing golf. But Washington's hide is well-scarred with character lapse.

Even more to the point in the Meese nomination are his professional qualifications.

To say the kindest, they are modest.

Meese was deputy district attorney of California's Alameda County. He directed a Center for Criminal Justice Policy at a San Diego law school.

That's it, so far as law goes. Yet he is slated to be our top law official.

We have hundreds of men and women who are better grounded in law and the Constitution. No, we have thousands.

Meese is a businessman, trouble-shooter and politician. He also is a good buddy of the president.

He qualifies to be "crony-general," as the Chicago Tribune puts it. But is good buddyism the way to pick cabinet officials?

Seattle, Washington Times, 12/31/84

MEESE AS ATTORNEY GENERAL

Tradition favors mediocre nominee

FORECASTS that the Senate soon will confirm President Reagan's nomination of Edwin Meese III as attorney general are based on a tradition that senators rarely second-guess Cabinet choices, no matter how mediocre.

In all of U.S. history, in fact, Cabinet nominees have been rejected only eight times, most of them in the 1800s. The most recent was 1959, when Dwight Eisenhower's choice of Lewis Strauss as commerce secretary was rebuffed by only three votes.

But if tradition is on Meese's side as his nomination comes up for a vote in the new Congress, few of the questions raised almost a year ago, when Reagan first proposed him as successor to William French Smith, have been answered satisfactorily.

Those questions centered largely on Meese's role in getting federal jobs for people who had helped him get out of some financial difficulties. To dispose of what Meese called "baseless insinuations," the nominee asked for and got a five-month investigation by a Justice Department-appointed special prosecutor, Jacob A. Stein.

Stein reported in September that he would have "no comment on Meese's ethics and the propriety of his conduct or an evaluation of his fitness for office." That, he said, was beyond his mandate. Instead, Stein said only that he could find no basis for prosecuting Meese for violation of any criminal statute.

Meese said he was "very happy" with the report, and the White House issued statements leaving an impression that the nominee had been "cleared" of problems impeding his appointment as the nation's top legal officer.

Common Cause, the citizens' lobby, rightly served notice that it will continue to oppose the nomination. Archibald Cox, Common Cause chairman, said that despite the special counsel's report, Meese's past conduct "shows that he is blind to the ethical standards and obligations required of a public official."

Other critics have noted Meese's limited credentials in the legal field.

About the best that can be said of Meese is that he has been politically loyal to Reagan. If the Senate does indeed confirm his appointment, it will be a sad commentary on the system for determining fitness for high public office.

The Burlington Free Press (Vermont)
January 15, 1985

Reagan Helps His Friends

President Reagan's nomination of Edwin Meese III to succeed Attorney General William French Smith a year ago seemed to fit a pattern the president has established during his tenure at the White House: He takes care of his friends.

But some of those friends, among them James Watt and Anne Burford, fell far short of the ideals that the public expects from heads of federal agencies. Other appointees — Smith is among them — bent the rules that apply to public officials with little or no comment by the White House. Which probably proves another point: Reagan sticks by his friends.

Having acknowledged that the president demonstrates such sterling qualities, however, it is then necessary to ask the price for such loyalty in terms of flawed government policies, casual disregard for regulations and laxity in carrying out the wishes of the people. Public service is a calling to which an individual must bring a high ethical standard. A person's reputation must be so unblemished that there is not even a scintilla of evidence of wrongdoing in the past.

The Meese nomination set off such a storm in Congress that a special prosecutor was appointed to conduct an investigation to determine whether Meese had been involved in illegal conduct during his tenure as a White House counselor under Reagan. Jacob Steen, the special prosecutor, issued a report in September that said Meese had not done anything illegal in series of financial transactions, involving the sale of his California home and loans from friends, while he was a top aide to the president. Steen stopped short of commenting on the propriety of Meese's conduct.

Now it appears that the Senate will confirm him as the nation's next attorney general and rightly so because a president should be allowed the prerogative of choosing the people he wants in his administration.

But a deeper question must be raised about Reagan's judgment in insisting that Meese become the country's top law enforcement officer. In refusing to withdraw the nomination, the president has revealed that his own standards are badly flawed as a result of his failure to recognize Meese is a poor choice for the job. Reagan should have removed the blinders of friendship and taken a hard look at Meese to determine whether he can carry out the tasks that are assigned to the attorney general. And there is a scent of hypocrisy in Reagan's persistence when only last fall called on the country to put its stock in traditional values.

The president has stood by a friend; it remains to be seen whether he has done the same for the nation.

Cleveland, Ohio Plain Dealer, 12/31/84

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EDITORIALS

Edwin Meese, redux

Early in the new year White House counselor Edwin Meese III is expected to appear before the Senate Judiciary Committee in his second effort to win confirmation as attorney general. He should not be confirmed.

Ethical questions regarding Meese's personal financial dealings, which caused the committee to suspend 1983's confirmation proceedings, remain. The fact that the five-month investigation by special prosecutor Jacob A. Stein could find no basis for prosecuting the president's lawyer for violating criminal law does not mean that Meese is fit to serve as the nation's chief law enforcement officer.

Nor did the Stein report attempt to address that issue. The special prosecutor specifically pointed out that he was making no comment on Meese's ethics or the propriety of his conduct.

He wasn't required to. Nor was there any need to. It was plainly improper for Meese to have helped people who lent him money get government jobs—before or after the exchange of funds. Since he did, ignoring the ethical considerations involved with such behavior, there is no putting aside the concern that as attorney general, Meese might be less than effective as a watchman responsible for pursuing the impropriety of others.

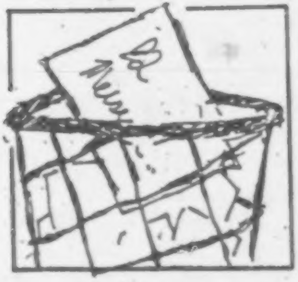
There is further discomfort in Meese's engineering for himself a promotion to the rank of colonel in the Army reserve when he lacked the formal training requirements—which were waived in lieu of something called "constructive educational credit." Presumably he was awarded such credit for his White House work experience with the commander-in-chief. In any event, the man who assigned the credit—the chief of the Army reserve, was recommended for a second term. By the new reserve colonel and counselor to the president, Edwin Meese III.

If the attorney general of the United States should be a person whose credentials should be above reproach—and that is what the job demands—then Meese is the wrong individual for the post. His casualness with ethical standards places a disagreeable scent in the public nostril. He does not deserve Senate confirmation.

Davenport, Iowa Quad City Times, 12/21/84

We say...

Forget about Meese



If press forecasts are accurate, Ronald Reagan shortly after his inauguration will renominate presidential counselor Edwin Meese III to replace William French Smith as attorney general and the Senate will confirm the appointment with little opposition. That's nothing to look forward to.

Just because some special prosecutor found "no basis" for indicting Meese for some questionable actions — like helping to get government jobs for several people who did him financial favors — that does not mean he is fit to lead the Justice Department and become and nation's top law officer. This leadership post should not be manned by anyone whose ethics are under such serious question.

Reagan could do the country — and probably himself — a big favor by looking among nearly a quarter-billion people for an attorney general who would command more respect, trust and confidence. Archibald Cox, former Watergate prosecutor and chairman of Common Cause, reports that Meese is "blind to the ethical standards and obligations required of a public official." The Senate would be blind, too, to confirm his appointment — as blind as when warning whistles were ignored to put Ray Donovan at Labor.

Common Cause points to "uncontradicted evidence" that Meese had a hand in getting high government jobs for people who did him financial favors. And it pointed out that Executive Order 11222 prohibits conduct that "might result in, or create, the appearance of ... giving preferential treatment to any organization or person ... losing complete independence or impartiality of action."

Relative to this is Meese's appointment to colonel in the Army Reserve. Though he fell short in educational requirements, he was given something called "constructive educational credit" to gain the promotion. Meese then interceded with a successful recommendation to get an unusual second term for the chief of army reserves. That just happened to be the fellow who got him the credits.

When the "sleaze factor" was brought up during the recent election, Meese's name wasn't far behind. America should shoot for the highest moral standards at Justice. But Meese, who deals for personal advantage through use of government influence and leverage, undermines such a quest.

Meese simply isn't attorney general material. That's plain enough to Americans. It should be plain enough to Reagan and, if not, then to a Senate that should demand a higher standard.

Beaumont, TX Enterprise, December 22, 1984

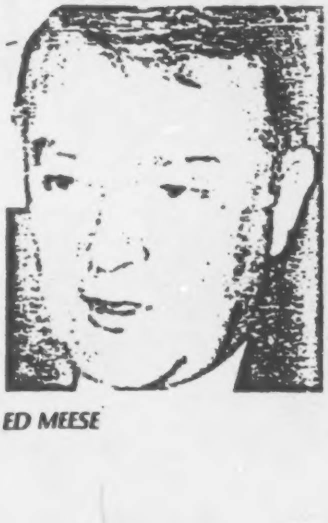
Reagan should lift Meese nomination

America's top law enforcement officer *never* should have to prove his innocence of charges that he misused his position or influence.

Yet, that is what presidential counselor Edwin Meese III — President Reagan's choice to be the nation's new attorney general — has been forced to do.

Despite being cleared of criminal wrongdoing by an investigation into whether he improperly obtained government jobs for friends, Meese is no more qualified to join the Cabinet now than he was when the questions first arose.

The citizens public interest lobby Common Cause, certainly no friend of the Reagan administration, has issued a report of its own that condemns the Meese nomination. Common Cause chairman Archibald Cox, the former Watergate special prosecutor, said the group's study reveals Meese's "utter insensitivity to ethical standards critical to confidence in government."



ED MEESE

Meese's nomination came under fire last year when an investigation looked into allegations that his wife spent government money for personal use and charges that Meese used his influence in the administration to win favors for friends. But just last September, a special prosecutor who investigated Meese said he found "no basis. . .for the bringing of a prosecution against Mr. Meese for the violation of a federal criminal statute."

However, the prosecutor did not deny that Meese did the things for which he was investigated. He said only that he saw no grounds for prosecution.

All right, Meese is not a criminal.

But that does not automically qualify him to be attorney general of the United States.

Too many questions remain from the investigation into Meese's conduct for him to serve in a post that requires absolute trust.

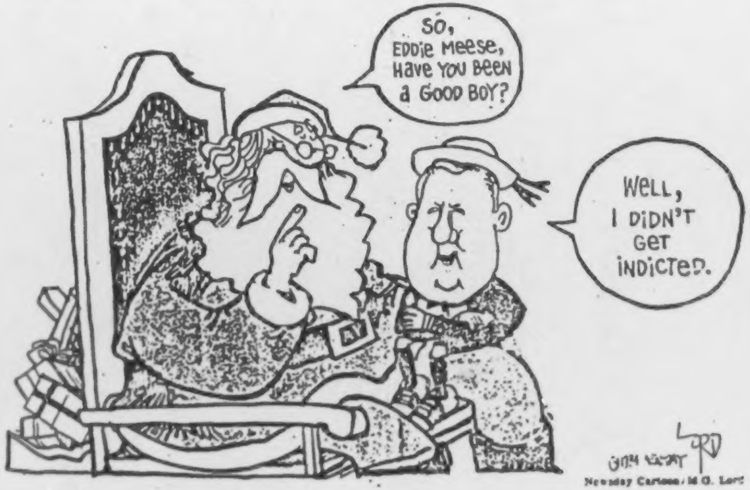
Characteristically, the president has vowed to stick with his nominee and says he will present his name to the Senate once more for consideration. He should, however, withdraw his good friend's name.

The president surely can find someone with impeccable professional *and* ethical qualifications. Ed Meese simply does not fit that description.

Newsday, 12/21/84

Editorials

Meese Is Unfit to Be Attorney General


SO, EDDIE MEESE, HAVE YOU BEEN A GOOD BOY?
WELL, I DIDN'T GET INDICTED.
LORD
Newsday Cartoon / M.G. Lord

Archibald Cox and Common Cause, the nonpartisan citizens' lobby he heads, are doing the nation a favor by continuing to address the issue of Edwin Meese's fitness to serve as attorney general.

In a letter sent this week to all senators, Cox said a special prosecutor's report showed that Meese was "blind to the ethical standards and obligations required of a public official." Cox understands those requisites; he was the first Watergate prosecutor and was fired for being too effective

Last spring, the Senate postponed action on Meese's nomination to succeed William French Smith after a number of charges surfaced. They were subsequently investigated by a special prosecutor, Jacob Stein, who concluded that there was not enough evidence to support a prosecution for violations of federal criminal law. President Ronald Reagan has said he intends to renominate his counselor and old friend early next year.

Yet Meese and his family were repeatedly the objects of extraordinary financial largesse from friends and acquaintances, several of whom later landed federal jobs. There were also allegations of filing false financial disclosure statements, illegally accepting gifts and insider stock trading.

In response to the special prosecutor's queries, Meese often said he couldn't remember events or actions. As Cox noted, Stein's report "reflects a man who is not merely occasionally forgetful, but rather, if taken at his word, suffers from frequent lapses of memory concerning conversations, documents and events bearing upon the integrity of his conduct."

Last fall, Meese and Reagan hailed Stein's report as proof of Meese's total exoneration. But it's considerably less than that. Stein refused to comment on the appropriateness or ethics of Meese's actions or his fitness for office. But he noted rather pointedly, "There is sufficient interest in those other issues to support an expectation that they will not remain unexplored . . ." Common Cause now seeks to insure that they won't.

Not being indictable is surely an insufficient qualification for the nation's top law enforcement job. As we have said before, Reagan would be wise to look for another nominee. Better yet, Meese should withdraw of his own accord.

Charlotte Observer, 1/2/85

The Charlotte Observer

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Wednesday, January 2, 1985

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Editorials

Is Meese Fit?

Ethical Questions Remain

Apparently Edwin Meese's nomination as U.S. Attorney General will sail through the Senate next month, now that a court-appointed independent counsel has found him unindictable for criminal misconduct.

In other words, Mr. Meese is not a crook. Never mind that he has shown almost no sensitivity for the questions of ethics, integrity and propriety that ought to concern the nation's top law enforcement officer. Apparently his loyalty to the president is sufficient qualification to get him into the attorney general's office.

Last year's confirmation hearings were aborted when questions arose about Mr. Meese's propensity for making rashly insensitive remarks about civil libertarians (among others) and for helping people get federal jobs after they helped bail him out of financial crises.

After a five-month probe of the favoritism charges, independent counsel Jacob Stein reported in September that he had found "no basis" for "the bringing of a prosecution against Mr. Meese for violation of a criminal statute." Mr. Stein took pains to point out, however, that he made "no comment on Mr. Meese's ethics and the propriety of his conduct or an evaluation of (his) fitness for office."

The president nevertheless hailed the report as a "gratifying" vindication of his old friend. N.C. Sen. John East, a judiciary committee member, said it reaffirmed his view of Mr. Meese as "a man of character and integrity." And Sen. Robert Dole, the new majority leader, pledged to move swiftly on the nomination. "I think we've held Ed Meese hostage long enough," Sen. Dole said.

The only fly in the ointment at this point is Archibald Cox, chairman of Common Cause and former Watergate special prosecutor. Mr. Cox has lately been pointing out that the Senate will be shirking its responsibility if it does not examine the ethical questions raised — but not resolved — by the Stein report.

"... It is not enough for an attorney general to have a little ticket saying, 'we find no basis ... for the bringing of a (criminal) prosecution.' Lack of evidence of violation of criminal statutes is one thing," said Mr. Cox. "Compliance with the ethical requirements of high office is quite another."

We concur with Mr. Cox and admire his perseverance. But we fear his eloquent defense of integrity will be drowned out by the pro-Meese chorus, led by a president whose standards for cabinet members have set a new low.

Syracuse Herald-Journal, December 5, 1984

MEESE: The awful appointment that simply won't go away

As soon as Bob Dole was crowned king of the Senate, he started showing signs of a strange ailment.

His mind goes blank whenever Edwin Meese III, friend of the president and financial finagler extraordinaire, is discussed. It may be catching; Meese's problem also involves memory lapse.

One of Dole's first promises as Majority Leader was to push for a vote on Meese's appointment as attorney general. Given his powerful position, if Dole wants a vote he'll get a vote.

And he'll probably get Meese confirmed, which would be an insulting disregard of the job description for the attorney general. He or she is supposed to be the nation's top law enforcement officer.

It's reasonable to expect high standards of conduct from anyone in that post. That's why we choke at the thought of Meese.

* * *

Soon after President Reagan nominated him, allegations about Meese's financial sleights of hand began surfacing. A special prosecutor was appointed but, on Sept. 20, he decided there was "no basis" under federal law for prosecuting Meese.

Sen. Dole sees that as complete exoneration. "I think we've held Ed Meese hostage long enough," he said Sunday.

Poor Ed Meese. There he is, chained to his White House desk and forced to stay in a $60,000-plus job when he could be having fun as the nation's top cop.

Meese was cleared legally, it's true, but he certainly wasn't cleared ethically. The special prosecutor didn't say Meese did nothing wrong — nothing as clearcut as that. He chose his terminology carefully. The prosecutor found "no substantial evidence of any motive" to conceal questionable financial deals. Meese's explanations for omissions were "credible," prosecutor Jacob Stein said.

* * *

We'd call that a less than wholehearted exoneration — with good reason. Consider one of several accusations against Meese: He "forgot" to report a $15,000 interest-free loan to his wife from an old friend, Edwin Thomas. Later, Thomas, his wife and son got federal jobs. All just coincidences, the special prosecutor assures us.

Right. We're expected to believe a man with serious financial difficulties stemming from problems selling his California home would forget a loan amounting to one-fourth of his salary. And we're expected to believe he forgot or overlooked other financial favors from powerful people.

Dole accepts all this with blind faith — or he has forgotten Meese's past.

Senators should give the nominee the benefit of doubt legally. He's entitled to that. Then they should consider if his conduct meets the high ethical standards required of an attorney general.

On that count, Meese is entitled to no such benefit of doubt.

The New York Times, December 20, 1984

Questions for Mr. Meese

To be cleared of criminal suspicion is a relief but not a qualification for high office. Yet when a court-appointed independent counsel found no basis for indicting Edwin Meese in September, President Reagan saw the judgment as "vindication" of his nomination to be Attorney General. Now Robert Dole, the new Senate majority leader, says Mr. Meese, having endured Judiciary Committee grilling and a six-month special investigation, merits swift confirmation next month.

That skips an important step, as a new report by Common Cause makes clear. Before confirming Mr. Meese, the Senate needs to confront the ethical questions raised but not resolved in the report of the special counsel, Jacob Stein. It was beyond Mr. Stein's mandate to state an opinion of Mr. Meese's fitness for the highest law enforcement office. But the facts recited in his report call for analysis by the Senate.

Of chief concern are a number of financial favors for Mr. Meese around the time that, as the President's counselor, he helped his benefactors get Federal jobs. The Stein investigation uncovered no evil motive, or even conscious pattern in those favors. But Mr. Meese needs finally to explain why he sees no connections between favors received and extended, and why he senses no ethical danger in those transactions.

For example, Mr. Meese's promotion to colonel in the Army Reserve, though in no sense criminal, was highly irregular. Lacking the educational requirements, he was given "constructive educational credit" and the promotion — and then recommended an unusual second term for the chief of army reserves who had awarded that credit. Mr. Meese's well-based intercession, with the Secretaries of the Army and Defense, was successful.

Curiously, Mr. Meese couldn't recall either a memorandum or telephone call from former Secretary of the Army John Marsh advising that it would be better for him to wait a year for a more regular-seeming promotion. Such forgetfulness ran through Mr. Meese's Senate testimony and also his responses to Mr. Stein.

An Attorney General needs a good memory and a sharp eye for impropriety. The office helps set an administration's moral tone. The Senate cannot responsibly confirm Mr. Meese without getting better answers to the questions of ethics and appearances that his case raises.

Meese Lacks Qualifications

P.B. Times 1/17/85

It has been nearly a year since President Ronald Reagan nominated his good friend Edwin Meese to succeed his good friend William French Smith as U.S. attorney general.

When he was nominated last January, Meese picked up immediate opposition on the grounds that his professional qualifications to head the mighty Justice Department were virtually invisible. Later, as the Senate began the investigation that normally precedes its confirmation hearings, facts emerged that indicate his unfitness for the job for more substantive reasons.

The investigation by a special counsel showed that Meese repeatedly did favors for people who had lent him money. The favors took the form of appointments to federal jobs or government office, an area in which Meese had great influence as special counsel to the president.

Ultimately, the special counsel concluded that he found "... no basis for the bringing of a (criminal) prosecution ... " The White House thereupon began acting as though Meese had been cleared of all wrongdoing. So have certain Republican senators who are anxious to get the matter behind them.

What they gloss over is the fact that the special counsel was asked to say that the evidence "... did not substantiate the loose charges of moral turpitude against Mr. Meese," but he refused to go beyond that, just as he refused to evaluate Meese's fitness for public office. He said those questions were beyond his jurisdiction.

They are not beyond the jurisdiction of the Senate Judiciary Committee, which will resume hearings on the Meese appointment in two weeks. The committee must ask whether someone of Meese's background is fit to serve as the nation's chief law enforcement officer.

Archibald Cox, chairman of Common Cause, said the special counsel's report shows that Meese "is blind to the ethical standards and obligations required of a public official." Cox has it right.

Ethics have taken beating from Meese

MESSENGER-ENQUIRER

Edwin Meese III should not be confirmed as attorney general.

Meese has violated no laws. But he repeatedly has violated federal ethics regulations. His record speaks for itself.

■ Meese got a $40,000 unsecured loan (with no interest due for one year) from his accountant John McKean. As a member of the Senior Staff Personnel Committee, Meese supported McKean's nomination to the Postal Board of Governors.

After Meese got another $20,000 loan and deferral of $17,000 in interest payments, much of it overdue, Meese supported McKean for a position on the board with a longer term. McKean had told Meese he wanted that post.

Meese not only failed to remove himself from the discussion of McKean's appointments, but never even mentioned his indebtedness to McKean.

■ Meese participated in decisions to name officials of Great American First Savings Bank to posts on the President's Commission on Housing, the Legal Services Corporation, the Commission on Civil Rights and the United Nations. At the time Meese supported these appointments, he was several hundred thousand dollars in debt to Great American, had received forbearance on monthly payments on one loan of $120,000, and was in default on another.

Meese did not disclose the potential conflict of interest.

■ The Senior Staff Personnel Committee of which Meese was a member

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recommended that Thomas Barrack be appointed Assistant Secretary of Commerce. Barrack had arranged the sale of Meese's California home when Meese was in financial trouble and unable to sell it. Barrack contributed $83,000 to the sale.

Meese did not disclose his ties to Barrack in discussing his appointment.

■ Meese failed to report a $15,000 loan his wife got. The interest-free loan came from someone he appointed to public office.

It "never occurred to him" to report it, he said.

■ Although he knew his promotion to colonel in the Army Reserve would be irregular — he lacked the required educational background — Meese allowed others to obtain preferential treatment for him. During this period Meese called the Secretary of Defense to urge the reappointment of General Berkman, one of the people responsible for his promotion.

The nation's chief legal officer should have impeccable legal and ethical credentials. By contrast, the Independent Counsel's Report, sparked by the allegations into Meese's conduct, documents a clear pattern of insensitivity to the ethical standards of public office.

Meese may not be a crook, but neither does his record qualify him to be attorney general.

Chicago Tribune, December 29, 1984

Chicago Tribune Saturday, December 29, 1984

Appointing a crony-general

According to Archibald Cox, the former special prosecutor in the Watergate case, presidential counselor Edwin Meese has shown "utter insensitivity to ethical standards" and therefore should not be confirmed as U.S. attorney general. His reasons seem more complicated than they need be. Mr. Meese should not be attorney general simply because he is a bad choice for the job.

Mr. Cox made his comments at a press conference on findings by another special prosecutor—this one a court-appointed investigator who looked into charges that Mr. Meese had violated federal laws. The conclusion was that he had not. He was charged with nominating or supporting for federal jobs several persons with whom he'd had financial dealings; Jacob Stein, the independent counsel, did not dispute that, but found that these actions did not add up to criminal wrongdoing. Mr. Stein did not comment on the ethical questions involved or Mr. Meese's overall fitness for the post.

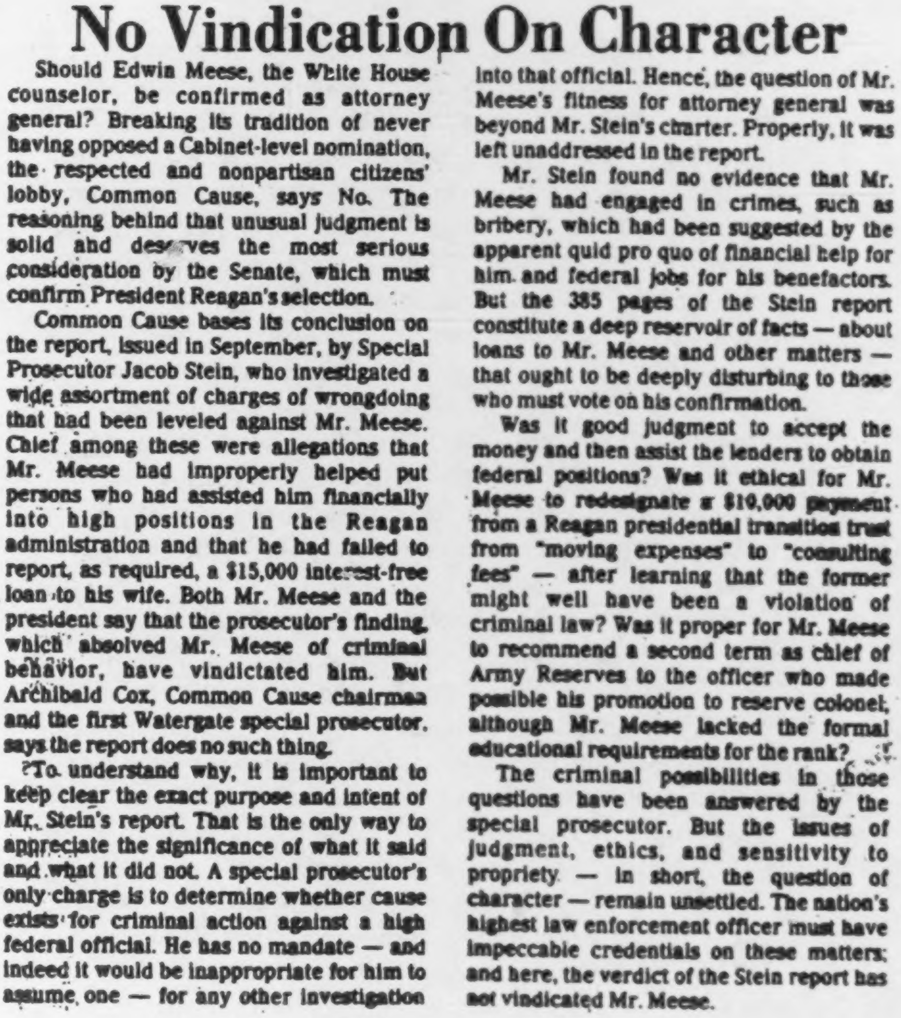
Ethics is just what concerned Mr. Cox and Common Cause, the public-interest group he now heads. And it has become the principal focus of attention in the Meese appointment.

But this is not the only argument against Mr. Meese, or even the main one. Let us pretend that Mr. Meese had never tried to wangle federal jobs for people who had done him financial favors—that he was a model of rectitude admired by all. That does not change the fact that he is unqualified for the post.

Mr. Meese has some background in law; he was deputy district attorney of California's Alameda County, and formerly directed the Center for Criminal Justice Policy and Management at the University of San Diego school of law. But this country abounds in better legal scholars and constitutional experts; Mr. Meese is primarily a businessman, and his role in the administration has been that of a planner and organizational troubleshooter. He was nominated for the sole reason that President Reagan likes him and seems unaware that any other qualification is needed.

If the appointment goes through, it will be an unabashed admission that the federal government is being run on the buddy system. To be the nation's top legal officer under this administration, one apparently needs only to be a booming, jovial fellow whose political views coincide with the President's. But that isn't nearly enough.

St. Louis Post-Dispatch, December 23, 1984



No Vindication On Character

Should Edwin Meese, the White House counselor, be confirmed as attorney general? Breaking its tradition of never having opposed a Cabinet-level nomination, the respected and nonpartisan citizens' lobby, Common Cause, says No. The reasoning behind that unusual judgment is solid and deserves the most serious consideration by the Senate, which must confirm President Reagan's selection.

Common Cause bases its conclusion on the report, issued in September, by Special Prosecutor Jacob Stein, who investigated a wide assortment of charges of wrongdoing that had been leveled against Mr. Meese. Chief among these were allegations that Mr. Meese had improperly helped put persons who had assisted him financially into high positions in the Reagan administration and that he had failed to report, as required, a $15,000 interest-free loan to his wife. Both Mr. Meese and the president say that the prosecutor's finding, which absolved Mr. Meese of criminal behavior, have vindictated him. But Archibald Cox, Common Cause chairman and the first Watergate special prosecutor, says the report does no such thing.

To understand why, it is important to keep clear the exact purpose and intent of Mr. Stein's report. That is the only way to appreciate the significance of what it said and what it did not. A special prosecutor's only charge is to determine whether cause exists for criminal action against a high federal official. He has no mandate — and indeed it would be inappropriate for him to assume one — for any other investigation into that official. Hence, the question of Mr. Meese's fitness for attorney general was beyond Mr. Stein's charter. Properly, it was left unaddressed in the report.

Mr. Stein found no evidence that Mr. Meese had engaged in crimes, such as bribery, which had been suggested by the apparent quid pro quo of financial help for him and federal jobs for his benefactors. But the 385 pages of the Stein report constitute a deep reservoir of facts — about loans to Mr. Meese and other matters — that ought to be deeply disturbing to those who must vote on his confirmation.

Was it good judgment to accept the money and then assist the lenders to obtain federal positions? Was it ethical for Mr. Meese to redesignate a $10,000 payment from a Reagan presidential transition trust from "moving expenses" to "consulting fees" — after learning that the former might well have been a violation of criminal law? Was it proper for Mr. Meese to recommend a second term as chief of Army Reserves to the officer who made possible his promotion to reserve colonel, although Mr. Meese lacked the formal educational requirements for the rank?

The criminal possibilities in those questions have been answered by the special prosecutor. But the issues of judgment, ethics, and sensitivity to propriety — in short, the question of character — remain unsettled. The nation's highest law enforcement officer must have impeccable credentials on these matters; and here, the verdict of the Stein report has not vindicated Mr. Meese.

The New Republic, 1/21/85

WHAT A MEESE!

By last spring it had become clear that Ed Meese couldn't be confirmed as Attorney General as long as suspicions remained about why so many of his financial benefactors had obtained government jobs. So Mr. Meese did a smart thing. He asked the Justice Department to appoint an independent counsel to decide whether or not to indict him—thus shifting public attention from the question of his fitness to be Attorney General to the question of his criminality. Last September Independent Counsel Jacob Stein decided that, on balance, Mr. Meese was not a criminal. President Reagan hailed the report as conclusive proof that the charges against Mr. Meese were "baseless." He demanded that the Senate swiftly confirm his friend. Most Senators seem eager to go along with this post post-Watergate mentality: if you're not indicted, you're a Boy Scout.

Well, we hate to be the only bluenoses in town, but we still have our doubts about Mr. Meese's qualifications. Mr. Stein himself emphasized that he could not meet a request from Mr. Meese's lawyers to dispel charges of "moral turpitude" against Mr. Meese. And the Stein report makes it clear that its conclusion doesn't mean there was no evidence of criminal conduct. The report depended also on "prosecutorial discretion"—subjective judgments about the severity of Mr. Meese's offenses and how difficult it would be to gain a conviction. Indeed, far from finding that the charges against Mr. Meese were baseless, the Stein report introduces damning new evidence, some of which is at odds with testimony given during Mr. Meese's confirmation hearings. (Scandal connoisseurs who want to learn more should consult articles by Christopher Hitchens in the December 29-January 5 issue of *The Nation* and Julie Kosterlitz in the January-February *Common Cause*.)

Mr. Meese, who always had to struggle to keep up with his wealthy California friends, invited trouble in the first place by living beyond his means. Then he relied on the kindness of those friends (and even strangers) to bail him out. Mr. Stein couldn't prove beyond a reasonable doubt that Mr. Meese knew his financial angels wanted government jobs—largely because Mr. Meese couldn't recall dozens of crucial events and documents. But it's hard to believe that Mr. Meese wasn't aware of what they were after.

Take the case of Thomas Barrack. In the summer of 1982, the Meeses wanted desperately to sell their San Diego home. Not only was their bank about to foreclose on the place, but they were also behind in payments on their $250,000 home in suburban Virginia. At the request of Mr. Meese's friend, Pendleton James, who had just stepped down as White House personnel chief, Mr. Barrack (whom Mr. Meese barely knew) came to the rescue. By September 1, Mr. Barrack had arranged a complicated sale which involved shelling out $83,000 of his own money.

Mr. Barrack then set about looking for a federal job. At Mr. Meese's confirmation hearings, Mr. Barrack said he never met with Mr. Meese during his job hunt. But the Stein report shows that Mr. Meese and Mr. Barrack met no fewer than four times that fall. After a meeting in Washington on September 8, Mr. Barrack sent Mr. Meese a letter thanking him for his "counsel and encouragement." On November 9 the Meeses had dinner in Georgetown; earlier that day Mr. Barrack had met with two cabinet officers about possible jobs. (Pendleton James was supposed to be there too, but had to cancel at the last minute. He asked Mrs. Meese if she and her husband would recognize Mr. Barrack. Mrs. Meese replied, "Oh, we'll recognize him. He'll be the one with a halo around his head.") Mr. Meese and his wife stayed at Mr. Barrack's California ranch over the Thanksgiving holiday, by which time James Watt had created a job for Mr. Barrack at the Interior Department. And on December 2 Mr. Barrack showed up at Mr. Meese's birthday party; the day before, he had started working for Mr. Watt. But Mr. Meese is not a curious man. He claims he didn't ask about Mr. Barrack's job hunt on any of these occasions.

Yet another murky series of events centers on the $10,000 Mr. Meese received from the Presidential Transition Trust in November 1980. Mr. Meese testified to the Senate Judiciary Committee that the money was a "consulting fee." According to the Stein report, however, the $10,000 check was marked "moving expenses" when Mr. Meese cashed it on November 22. Later the check stubs were changed to read "consulting fees." Why the switch? No one remembers exactly. But Peter McPherson, a lawyer who headed the Transition Trust, testified to Mr. Stein that he told Mr. Meese in early December that it was illegal to use the trust's money for moving expenses. According to Mr. McPherson, Mr. Meese told him to drop the matter—but didn't mention that he'd already cashed a check for moving expenses. Also, fellow White House aide Michael Deaver told Mr. Stein that Mr. Meese said he'd try to find a source of cash to help Mr. Deaver make the move east, but later told him that "the lawyers" wouldn't permit it.

The only thing Mr. Meese claims to remember about all this is that he heard—somewhere—that there would be a "problem" with being paid moving expenses, and ordered the checks changed. Is Mr. Meese saying that he changed the records, but doesn't know why? (He never submitted a bill for consulting.) In a particularly generous bit of prosecutorial discretion, Mr. Stein came up with an innocent explanation. "Mr. Meese . . . did substantial work for [the Trust] . . . and thus was entitled to compensation for his services. Despite questions as to who authorized the changes . . . the records of the Trust were changed to reflect the revised purpose of the checks as consulting fees. On the basis of the above, we do not believe a violation . . . by Mr. Meese could be established."

We could go on and on. At a meeting on November 8, 1982, Mr. Meese and a San Francisco accountant, John McKean, agreed to defer $12,000 in interest payments Mr. Meese owed Mr. McKean. At the same meeting the two discussed extending Mr. McKean's appointment on the Postal Board of Governors. But Mr. Meese insists "there was never any connection in his mind" between the two matters. Contrary to what Mr. Meese implied at his confirmation hearings, the Secretary of the Army warned Mr.

> Meese—in a memo and a phone call—that it would at the very least create a bad appearance to grant Mr. Meese's request for a highly unusual (and highly lucrative) promotion in the Army Reserve. Mr. Meese took the promotion anyway. He claims not to remember the memo, even though the Stein investigators tried to refresh his memory by showing him a copy which he himself had mailed back to the Secretary. (Interestingly enough, the Stein report is silent on the question of whether Mr. Meese remembers the phone call.)
>
> But you get the picture. The Stein report goes on for 400 pages and one searches in vain for signs that Mr. Meese ever thought of calling a halt to the monkey business being conducted on his behalf. He may not have done anything provably criminal, but his behavior was hardly what we'd expect from the nation's highest law enforcement officer. Mr. Meese's nomination comes up again at the end of this month, and the Administration wants a no-muss, no-fuss confirmation. The Senate shouldn't go along.

Senator METZENBAUM. Now, some have said that this hearing is routine, that the votes are there and those of us with remaining questions are wasting the Senate's time. I do not agree with that. I believe that the Watergate prosecution force was right in 1975, when it recognized that future Presidents should not appoint campaign officials to be Attorney General.

I believe the Senate was right when it passed the Bentsen amendment which spelled out that position in legislation.

Unfortunately, that amendment was not accepted by the House. But the principle it embodied is no less compelling. It is easy to vote to confirm Mr. Meese. It is easy to accuse those of us who oppose him of being partisan or petty. But if you really believe, as I do, that the Attorney General should be someone every American can look up to with pride, that he should be someone they can look up to with a sense of trust that the laws will be fairly applied to all, then you must conclude that in this instance, the nomination should be rejected.

Thank you.

The CHAIRMAN. I might say, for the benefit of the public, that a Senator has a right to reach a decision before a hearing is held, during a hearing, or at the conclusion of a hearing. It is hoped that most of the Senators during the hearing will reserve final judgment until the hearing is over.

During this hearing, I shall place in the record numerous columns, editorials, and articles in favor of Mr. Meese.

The distinguished Senator from Utah, Mr. Hatch.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

I wish to welcome you again, Mr. Meese, to the Senate Committee on the Judiciary. Although I am certain that you have enjoyed your ample opportunity to associate with us on this panel, I hope that we will now move with expedition regarding the process of your nomination.

I have been intrigued and very much impressed with how widely read Senator Metzenbaum is on newspaper editorials. As a matter of fact, some of us, you know, have a great deal of difficulty digesting even The Washington Post every day.

Senator **Leahy**. And some do not.

Senator **Hatch**. And some rarely understand it. I have to admit that—even on this committee.

I believe, in all seriousness, that Mr. Meese is a man of character, a man of professional competence, and a man of integrity.

I have no doubt that you will serve your country well, with distinction, as the Attorney General of the United States of America. There is little that I can add to the statements of Senators Thurmond and Laxalt, but I would like to be permitted a few general observations on this whole affair.

In particular, I would like to briefly comment on the significance of the report of the independent counsel. We have all heard it said that the report is not particularly relevant to the present hearings; that the report has found merely that Mr. Meese is not a criminal, and that this is not a sufficient recommendation for Attorney General.

Of course, it is not enough that a nominee for Attorney General is not indictable. However, the report of the independent counsel is of critical importance, for reasons that go far beyond the questions of any possible criminal conduct. To downgrade the significance of the counsel's report is to distort its very real meaning.

Investigation by a special counsel was triggered by a perception among some members of this committee that there were unanswered questions about the details of Mr. Meese's conduct as Counselor to the President. If explained one way, they would give rise to issues of criminal and ethical concern. If explained differently, they would be purely innocent.

It has been, it seems to me, the charge of the special counsel not merely to determine whether Mr. Meese was indictable, but to determine the facts of his conduct. To me, that is what is important here. The special counsel did not find any indictable offense, but he did make important factual findings which I think have been extremely distorted in the public discussion of this matter.

In the course of carrying out its mandate, the special counsel has accomplished a great deal that is useful and instructive to our committee. First, he has explicitly concluded that Mr. Meese did nothing of a criminal character, nothing that warranted an indictment.

Second, in so doing, he has made necessary findings which do exculpate Mr. Meese from even many of the allegations of unethical conduct. If, for example, Mr. Meese had traded in Government employment for personal favors, he not only would have acted in a manner inconsistent with proper standards of conduct, but he would have been in violation of section 201 or 211 of the Criminal Code. Mr. Meese thus has been found by special counsel not merely to be innocent of criminal wrongdoing, but at the same time, to have been free of any related ethical breach.

I understand, of course, that the counsel has refused—I think properly so—to offer conclusory observations on the ethical behavior of Mr. Meese. He has done so indirectly, however, in the course of many of his conclusions about Mr. Meese's compliance with existing Federal law.

Finally, the special prosecutor has made another substantial contribution. He has laid out the facts in a clear and thorough manner for this committee. He has described for us what took place in the dealings by Mr. Meese which are in controversy. He has set forth the details for us to consider and assess.

What we are left with, then, as the substance of the case against Mr. Meese is very interesting. He has been exonerated of criminal misconduct. He has indirectly been exonerated by the counsel of the most serious breaches of ethical wrongdoing. Even Mr. Meese's friends at Common Cause have responded to the final report by conceding that "Mr. Meese may have intended no wrong."

Indeed, there is absolutely no evidence that Mr. Meese did intend to do wrong. There is no evidence for this in the counsel's report; there is no evidence in our prior hearings. And as far as I can see there is no evidence in the testimony by the various groups before us today.

There is not merely an absence of a smoking gun; there is not even a hint of smoking.

What we are left with is simply that Mr. Meese has not satisfied, in the minds of some, the obligation to avoid the appearance of misconduct. This accusation has apparently become the last resort for those who are really determined to assassinate a good man's character.

Never mind the facts. Let us concentrate instead on appearance. Now, because there were members of this committee who initially believed there to be a potential appearance of misconduct, we authorized the actions of the special counsel. It was either to confirm or to allay this appearance of misconduct that the investigation was launched. Whatever the appearance to some of misconduct, the counsel concluded that, in fact, there was no actual misconduct. He investigated the circumstances of Mr. Meese's conduct and concluded that whatever appearance of misconduct there may have been in the first place, it had been reasonably and adequately explained in a reasonable way.

What Common Cause and others are now saying is that, although we cannot point to evidence of actual misconduct, Mr. Meese acted wrongly in even giving rise to the appearance of misconduct. Even this is not true. There are many members of this committee, including myself, who were never persuaded that Mr. Meese's conduct appeared to be improper. We never believed it. We never believed it particularly suggestive that individuals are likely to be favorably disposed toward helping their friends or associates where possible.

Following the counsel's report, we were even less comfortable in acknowledging any "appearance" of impropriety.

What Common Cause is saying is that the standard is not merely going to be whether there is a mere "appearance" of improper conduct, but that such "appearance" is to be ascertained by those individuals or organizations that are most suspicious, most skeptical and least trusting of the good faith of the individual in question. I think that is an absurd and grotesque standard. It is a standard that few in the political world could satisfy.

We, in the Congress, could not satisfy it if we ever accepted a campaign contribution from a business or a labor organization whose interests we subsequently supported by our rollcall vote. We could not satisfy it if we ever hired a friend in our office or assisted one in wending his way through the bureaucracy. We could not satisfy it in 1,001 other ways. And I think everybody up here knows it.

Let us make no mistake about it. The standard that Common Cause would have us employ in this case is not merely unworkable—which it is—but it violates fundamental concepts of due process and fairness. I have no doubt about that.

Mr. Meese has been found to violate no rule of law. He has been found to violate no precept of ethical conduct. Those of his actions which are susceptible to ambiguous interpretation by the special counsel have been explained favorably—and I might add, favorably to Mr. Meese. Read the report. All that we are left with is the view of some observers, certainly not all or even many, that Mr. Meese has been insufficiently cautious in avoiding the appearance of impropriety. Never mind that the reality of the conduct has been explained. For me, the integrity of Common Cause's case is adequately summed up by its fascinating statement about Mr. Meese: "Whatever his subjective motive, Mr. Meese did link by his actions the loan and the job." Whatever his subjective motivation: It used to be that this little detail of subjective motivation was the linchpin of the investigation process. I do not believe that Mr. Meese ever intended to act improperly. Nor is there evidence in the special counsel's report that he ever intended to act improperly. Common Cause seems to say, "We do not care what he thought. We intend to believe the worst and could care less about Mr. Meese, his family, his reputation, his life of public service."

Thus, the reputation of Mr. Meese is ultimately to be left to the interpretation of those least disposed to believing explanations of his innocence.

Mind you, we are not referring to their judgment on the fundamental question of guilt or innocence, but rather, to their judgment on the exotic question of the appearance of guilt or innocence. Caesar's wife could not satisfy this task, much less any one of the rest of us who are occasionally embroiled in the grit of day-to-day politics.

Mr. Chairman, what we see here is the anatomy of a scandal in search of itself. Common Cause seeks to clothe its antipathy for the kind of conservative causes championed by Mr. Meese in procedural garb. We have seen a succession of efforts to twist stray, innocent facts into a grand jury case. If the gift of Korean cufflinks does not fly, let us try "Debategate"; if not that, then perhaps the appearance of impropriety can be run up the flagpole. No serious case has yet been made.

The Wall Street Journal has described this process as a lesson in how to effectively quash political enemies in three easy steps: raise accusations, damage reputations, and ignore vindications.

In conclusion, let me place one further bit of perspective on Mr. Meese's situation. As an undisputed result of his financial dealings in question here, he has incurred no great wealth. In fact, he has incurred no wealth whatsoever, and indeed, has suffered substantial losses to serve this country. These are losses directly attributable to his public service in counselling the President of the United States. Mr. Meese has cheated no one, he has lied to no one, he has defaulted on none of his obligations, and he has come out of his service a poorer man than when he began—considerably poorer.

The nomination of Mr. Meese as Attorney General deserves to go ahead expeditiously. There is not simply an absence of evidence that would cast a shadow upon Mr. Meese. There is, in addition, and I think this is an important point—a wealth of evidence that would suggest that he is well-equipped to serve his country with honor and with distinction.

I thank you, Mr. Chairman.

The **Chairman**. The distinguished Senator from Arizona, Mr. DeConcini.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator **DeConcini**. Mr. Chairman and Senator Wilson, first let me compliment the chairman of this committee particularly for his actions in the 98th Congress, of pulling this nomination and not proceeding with it. I think the climate was of such a nature that we would not have had an objective, open hearing process and been able to reach a final decision.

Let me say at the outset, I respect my colleagues on the Republican side of this committee, as I do the Democrats here, for their staunch defense of Mr. Meese. I believe that is part of the process, and I welcome their admonitions, their advice, and indeed, I listen to it very carefully.

I believe, Mr. Chairman, that the greatest responsibility placed on us by the privilege of serving on this committee is the responsibility of confirming the Supreme Court Justices and the Attorney General. In my 8-year tenure on the committee, I have had this responsibility three times—two times with Attorney General and once for Sandra Day O'Connor on the Supreme Court.

I come to the confirmation of Edwin Meese as Attorney General believing it to be one of the four most important votes I will have made as a member of this committee. I must be absolutely sure in my own mind that Mr. Meese is qualified by nature of competence and integrity, to be the Attorney General of the United States.

Mr. Meese, at this point, I am not convinced, I have not decided how I am going to vote. I intend to listen and read very carefully the evidence and testimony presented to the committee. I expect you to respond to the committee's questions, and I am sure you will. I expect you to be candid and forthcoming with us, and I am sure you will as you have attempted to be in the past. If you are, I have every reason to believe that you will be confirmed as our next Attorney General.

Perhaps in 8 years the members of this committee, who are now asking the toughest questions will be praising the performance of Attorney General Edwin Meese. If you are confirmed, this Senator would like nothing better than to cite you as an example of a man who has overcome many obstacles to become a tough, independent, honest, and effective Attorney General of the United States.

But I believe that the questions which are going to be presented to you today and in the next day or so to be legitimate.

Senator John Heinz said, in conjunction with the nomination of Attorney General Griffin Bell: "I think we must also have a similar negative presumption against any prospective Attorney General who comes to us with a close personal/political relationship with the President whom he is to serve. Of course, this negative presumption must be rebutted."

So, Mr. Meese, whether or not the presumption here is on you or on us, there is no question about it—your close relationship with the President is of concern to this Senator, as it relates to your ability to act independently. Can you show that independence? Can you stand up to the very close personal relationship you have with President Reagan and say "No" when it is appropriate? Do you have the sensitivity and concern to recognize conflicts of interest and ethical problems when they arise despite your past successful and close relationship with the President of the United States?

The Stein report indicates that these questions about ethical activities have yet to be answered. I am sure that they will be during the course of these hearings.

I am very pleased for you, Mr. Meese, that no criminal aspects as they relate to your actions were found by the Stein report. We are thankful to be able to put the possibility of criminal actions behind us. I am satisfied with the Stein report's conclusions as to the criminal allegations that were investigated and dismissed based on the evidence that they examined.

Now, we must turn to the question of ethics and integrity. Before doing that, let me state that I am very satisfied with your competence. I think we would be well-served by someone with the background that you have in law enforcement, in the practice of law, the teaching of law, and recently, with the administration. Also, I appreciate your commitment to the strong antidrug efforts of which I also have been a part.

The question is the standard of ethics to apply to anyone who would be the Attorney General of the United States. What standard do we place on a person who would be the first of all law enforcement officials for the United States—the lawyer for the country, the lawyer for the people?

I stand here to listen carefully, objectively, and I intend to do that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguished Senator from Wyoming, Senator Simpson.

OPENING STATEMENT OF SENATOR ALAN K. SIMPSON

Senator SIMPSON. Mr. Chairman, thank you and good morning. I thank the Senator from Arizona for his gracious and thoughtful comments. I think those are appropriate. They set the tone.

I will not relate what I said the last time as you came before us, Ed. That was quite enough, according to my wife.

Senator DECONCINI. She was right. [Laughter.]

Senator SIMPSON. And to the patient Senator Wilson there, you did not realize what we do in Judiciary Committee, did you—now you do.

Well, here we are. I will not go on to relate what we have done. It has been rather succinctly reviewed as we began these hearings. Eleven months have passed, 4 days of hearings in early March of last year, which painstakingly reviewed the life and times of Ed Meese. The transcript is 4 inches thick. There have been proceedings by a Federal grand jury which called 45 witnesses; a 6-month investigation by an independent counsel, assisted by five assistant counsels, who interviewed 200 witnesses there; and they used the investigative resources of the FBI and the Federal Prosecutor's Office.

What is it that we in the Senate are trying to determine? Rather, what is it we are seeking to exact, may be the question in this confirmation process.

Are we really seeking perfection? It is odd to me how we seek perfection from our legislators and from others, when we do not have it in our own lives. I do that, too

With whimsy, I note that the acceptance of generous honorariums, stunning salaries, a remarkable array of freebies, and modest gifts are not unknown in the fourth estate, who remark so crisply on this issue.

So, we want to know whether Ed Meese is qualified to serve as Attorney General. What qualifications, personal and professional, are required of the person who will head the Nation's largest law firm and who will be our chief law enforcement officer?

That person should have extensive law enforcement experience. You have it.

He should have the ability to educate and influence the Congress. You have done that on many occasions in the past.

He should have experience in the management of a large organization. You have done that.

You meet all and exceed all of the qualifications we are seeking. You have had extensive experience as a prosecutor. You have represented the State's principal law enforcement organizations before the California Legislature. You taught at Berkeley and the University of San Diego Law School, and you served as Chief of Staff for the Governor of California.

But those are not new facts, and I doubt we are going to find much that is truly new during this hearing. We have used an extremely fine-toothed comb on you, Ed Meese—surely, finer than anything that would ever serve my needs, I can tell you.

If there remain any unasked questions, let us stick to those and not cover old ground once again. There is really not much to dredge up. We have done it. I think, with almost a little bit of delight, about "Debategate." Whatever happened to "Debategate," for heaven's sake? We played that baby like a drum around here, and when it all ended up in a journalistic slag heap, it was reported on page 17, back there with the truss ads.

So it goes in this curious arena. Well, certainly, it is not in the national interest to drag this one through another extended series of hearings, and my colleagues, it is time to complete our committee function and send this nomination to the floor, where the Senate can do what it was elected to do, and that is make the decision to confirm or not this man. Now is the time to do that.

In conclusion, Mr. Chairman, I would just say that I have personally been aware that this has been a very long, difficult and painful process for Ed and Ursula Meese and their family. He has never wavered. He has handled it all with great class, as they rained this stuff on his head from all sources. We have heard all sorts of innovative forms of hearsay and innuendo and allegation that would never pass the test in the court of law, ever; and not one of us at this table who have practiced in that remarkable profession would argue that. Yet, you never attempted to try your case in the media; while others had a high old time of it, you hung right in there.

I guess I would say that the detractors seem to me to become more shrill, more strident, more petulent, and even now, a little bit pathetic. It is like they are saying, "Darnit, Ed, why don't you 'fess up, so we can toss the noose over the limb and ride off into the West and nab some other bum?" That is where we are.

You, I think, come out the better for it, as you have handled it with grace, without utilizing the same tactics.

So certainly, this Senate should be ready to confirm you, and let us get on with the serious business of operating the Justice Department.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguised Senator from Vermont, Mr. Leahy.

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Thank you, Mr. Chairman, Senator Biden, Attorney General-designate Meese, Senator Wilson, and members of the committee.

Along with my colleague from Wyoming, we share not only hairlines, but I must say, the same concern for your family. I must admit, Mr Chairman, thay I am glad the matter is now coming up. I understand we are going to have all witnesses, and it is the Chair's desire to finish this matter at some appropriate time, soon. I think not only for Mr. Meese, but for Mrs. Meese and their children, who have had to sit through a number of these sessions, they will probably be glad to see Dad come to a conclusion.

I also agree though, that it was wise to postpone the hearings last year, at the time they were, until this time, certainly, to allow the staff report and other things to be done. Here again, I think, Mr. Chairman, you and I agree on that as to each member of this committee, because the Congress and the Nation have a great deal at stake in the selection of the Attorny General of the United States. Except for the President, no one in the Nation does more through action or inaction to set the moral tone of governance.

It is the Attorney General who must vigorously enforce our laws. It is the Attorney General who must lead and guide the fight against crime. Having spent about one-third of my adult life in law enforcement, that is personally very, very important to me.

It is the Attorney General who has much to say about whether civil rights are afforded to all equally under the law.

It is the Attorney General whose skill and wisdom are prerequisites to open Government, and it is he or she who must often weigh the vital interests of national security against the equal vital interests of the first amendment.

While the Supreme Court has the last word on what our laws mean, the Attorney General has often more importantly the first word. The Attorney General sets legal policies for government, and by example, he or she sets moral and political policies as well.

Now, Mr. Meese, when you last came before us last spring, this committee had few means to weigh the validity or importance of a number of issues raised about your conduct. Since then, the independent counsel has completed his work, and the Stein Report should put beyond our consideration any questions of criminal wrongdoing. I do not really feel that is an issue here, nor should it be.

But that report does not, and of course cannot, nor is it intended to speak to, are your qualifications for the high office of Attorney General under the ethical standards that have traditionally applied to every employee in the service of the government, and which really have to be applied with the highest standards to a lawyer, whose job it is to set the standards for all the rest of us.

Our system of government has two advantages over all others. The first is our Constitution, framed with care and wisdom nearly 200 years ago and maintained with reverence by the American people—all of the American people—ever since.

The second is no less important, and that advantage is the quality of the people who serve in our government. In the case of the Attorney General, the quality of the person who serves in this office can deeply affect how well the Constitution will serve the nation.

It is for this reason that this committee is proceeding with care and deliberation. It is for this reason that I hope we can establish a candid and complete record on which the full Senate can base the important judgment that lies ahead. It is for this reason that I would hope that the Senators would wait to hear that record to makeup their minds.

But lastly, lastly and most importantly of all, it is for this reason we establish standards for the Office of Attorney General, and in so doing we tell Americans what are the standards of the U.S. Senate.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from North Carolina, Mr. East.

OPENING STATEMENT OF SENATOR JOHN P. EAST

Senator EAST. Mr. Chairman, distinguished members of the committee, Mr. Meese, Senator Wilson, I appreciate the opportunity to speak briefly on this matter.

Senator Wilson earlier said that, in response to the question whether he was learning how the Judiciary Committee functioned, he said he was, but I discerned in his voice a bit of reserving judgment, for a while, as to whether he was impressed or unimpressed and as to whether he would at some point seek a position on this committee. That shows the great wisdom and prudence of the junior Senator from California.

Mr. Chairman, I do not wish to unduly impose upon the distinguished members of this committee or upon the people here this morning who are anxious to move on. But I feel the time has come when certain candid things need to be said. I say them in a spirit—the best that I can muster—of fairness, civility, reasonableness and, I hope intelligence. I think they need to be said lest we lose sight of the forest for the trees.

The independent counsel in this case concluded that in no instance was it found either that the financial transactions for which Mr. Meese has undergone examination were improper in themselves, or that they had anything to do with appointments to positions in the Federal Government. He has been fully and completely exonerated.

I raise this next question. Are the objections here to Mr. Meese—with all due respect to those who may object to it at this point or at the end of the hearings—really substantive and philosophical? If they are, then I think there ought to be the candor to say so.

In the past I have objected to certain nominees of this administration on philosophical or policy grounds. I have not attempted to subvert the real substance of that opposition by attempting to find, to dredge up, procedural or ethical objections that really do not go to the heart of the matter.

Again, I wish to make it clear that I am not judging the motivation, the integrity, or the intellectual honesty of any Senator on this committee. I am simply saying I feel that we owe it, in terms of the integrity of this committee, that if our objections to a given nominee are fundamentally of a philosophical or substantial nature, then we have the obligation to say so.

I think that in the case of Mr. Meese, if we could get beyond where we have been floundering for recent weeks and months, he could allay any fears, and we could get on with the responsible execution of the confirmation process.

I think it raises a fundamental constitutional question transcending Mr. Meese; namely, how well are we doing in preserving the integrity of the confirmation process assigned to us under article II? I do agree with the distinguished Senator here, the Majority Whip, Senator Simpson. I think that Senator DeConcini set the proper tone; namely, of a willingness to listen, to be openminded, and to finally make a conclusion. But I think that we are going to find it increasingly difficult to get good men to serve in public office where we can go on ad infinitum, dealing with matters that are marginal and peripheral and do not go to any fundamental questions of substance.

I would like to quote briefly from the Wall Street Journal of May 30, 1984:

> The Ethics and Government Act and the Federal Election Campaign Act, these laws have lost any connection they might have had with ethics or clean politics. They are gravy for the lawyers, and for the politicians. They are two pieces of heavy artillery, which any party or candidate can roll out to bomb the opposition.

The editorial concludes:

> We are all for ethics. Who isn't? But the campaign reform law and the Ethics in Government Act are not about ethics. They are about politics, at best, and political hypocrisy most of the time.

I think that puts its finger on it. If you remember when the Ethics in Government Act went into effect, it referred to a "special prosecutor." That was changed to "independent counsel". Hamilton Jordan was caught up in it—Carter administration White House Chief of Staff—and later exonerated. Though—Carter administration Office of Management and Budget Director—Bert Lance was not subjected to it, it was a similar kind of problem—forced out of public office, but later exonerated of any wrongdoing.

What we are up against here—and I think it is a most unfortunate thing—is a very carniverous and cannibalistic atmosphere. A senior Senator told me one time, "But East, it comes with the turf." It ought not to. It ought not to come with the turf. It makes for uncivil Government. It makes for Government in which you will not in the future be able to get highly-qualified and talented men and women to offer their public service. And I do not blame them. To drag them and their loved ones and their friends through this kind of thing is not worth the price you pay. And I think we ought to reflect long and hard on that.

I think that in the case of the Senate confirmation process, which is our obligation under the U.S. Constitution—to give advice and consent—a certain presumption ought to operate in favor of the President's nominee. Of course, we can and should look at the issue of integrity. But in this case, that subject has been totally, totally exhausted, and totally satisfied. Those who carry on with it—and again, I am not judging the motivation or the sincerity of those who do it—unwittingly are eroding away the integrity of one of our great obligations under the Constitution: the confirmation process.

As to whether any given Presidential nominee ought to be subjected to some sort of ideological litmus test, there have to be reasonable limits to that. What else is a Presidential nominee to a Cabinet post to do but to represent the policies of that administration? How could it be otherwise? And if we are going to subject every nominee to a perfect record on philosophy or related substantive matters—ideological litmus test—then few, if any, will pass muster.

So, I hope in this case that this committee and the U.S. Senate will rethink in broad, objective, and fair terms, whether we are really upholding the dignity and integrity of one of the most sacred obligations we have under the U.S. Constitution. And from what I have seen so far, again, without judging any particular Senator, I am deeply concerned that we may not be doing that. And I would ask my colleagues on this committee and in the U.S. Senate to reflect on that.

Thank you, Mr. Chairman. I have said my piece.

OPENING STATEMENT OF SENATOR MAX BAUCUS

The CHAIRMAN. The distinguished Senator from Montana, Mr. Baucus.

Senator BAUCUS. Thank you very much, Mr. Chairman.

Mr. Chairman, I think as all of us sit here today and either make our statements or listen to this hearing, we are struck with the fact that this is one of the more difficult nominations this committee has faced for some time, and perhaps in many respects, will be one of the more difficult nominations this committee will face. I think that is because it falls into that gray area, that "never-never-land" between obvious confirmation and obvious denial. It falls in the middle someplace.

One reason this nomination falls into that gray area is that article II of the Constitution is very imprecise as to what standards this committee must apply in deciding whether to confirm or not to confirm a Presidential nominee. In fact, surprisingly little has been written about the advice and consent standards which the Senate must apply. There have not been, in this Senator's knowledge, serious investigations and serious efforts to try to adopt standards. And beyond that, it was interesting to this Senator that even the Federalist Papers are surprisingly sparce in their discussions of what standards the Senate should apply to either confirm or deny a President's nominee. Basically, there are no standards.

Nevertheless, I think it is somewhat clear that through the years, the Senate Judiciary Committee and the Senate as a body have generally worked toward several rough standards. The first is that the President should generally be able to appoint the people of his choice to fill constitutional offices. After all, that is why we elect Presidents. The President should have the right—in fact, he has the duty to put in place the principles and policies which he espoused during his campaign. That is why the majority of Americans voted the way they did or why the majority of electoral votes are tallied in favor of that particular person. Certainly, then, a President should be able to appoint his people.

It is also somewhat clear that Senators have evolved two reasons for denying the President's right to a certain person. Those two standards revolve around questions of the nominee's competence and questions of the nominee's integrity.

Now, obviously, different Senators are going to have different judgments as to whether or not there are questions of competence or questions of integrity. Most of the questions that have been raised about this particular case revolve around integrity.

It is clear that many allegations have been made concerning the nominee's integrity, many questions about alleged criminal conduct, and many questions about alleged unethical conduct.

It is also clear that the Stein Report has cleared the nominee of any criminal conduct. That is not before us here today. The question, though, is the degree to which the nominee has engaged in unethical conduct and the degree to which that conduct requires this committee, under the Constitution, to deny the President's right to his person in this particular case.

As I said at the outset, that is a difficult question here because it falls into a gray area. As has been stated, we should not hold the nominee to a standard of absolute perfection. No person is perfect, not even Senators. Certainly, no person who could be appointed to any particular office is perfect, and it would be improper for this committee to apply the standard of perfection to any nominee.

But it is equally clear that there are very serious questions of unethical conduct. The point, of this hearing is to determine the degree to which that conduct is unethical in order for this committee to recommend to the full Senate whether or not to confirm this particular appointment.

Mr. Chairman, I think ultimately there is a deeper question here. At one level the question is whether or not this nomination should be confirmed. The deeper question is what standards this committee is going to apply, because the answer to that second question determines the answer to the first question.

Each Senator obviously will apply or tend to apply different standards. But I seriously hope, I strongly hope, I profoundly hope that as this committee considers this nomination, we will strive as mightily as we can and undertake what effort we can to attain the highest standards that are reasonably possible to attain.

We should err on the side, perhaps, of being too responsible; that is, too much in the direction of high standards, if we err at all. But, certainly, we have to exercise proper judgment. We have to fulfill the responsibilities that our electors placed on us when they elected us in our home States, and we have to fulfill the responsibility placed on us when we took the oath of office to uphold and protect the Constitution.

Well, it is not an easy question to answer, Mr. Chairman, and that, too, is why this is a difficult nomination. It is not easy to know precisely what standards we should apply. But I urge this committee to push for the highest possible standards before we decide whether or not to confirm this nominee. In that way, we will know that we are faithfully upholding the oath of office we took as Senators.

I thank you.

The **CHAIRMAN**. The distinguished Senator from Iowa, Mr. Grassley.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator **GRASSLEY**. Thank you, Mr. Chairman, members of the committee.

Mr. Meese, we welcome you here today, as I welcomed and appreciated the opportunity to meet with you twice in my office this past week.

Mr. Chairman, it would be difficult for me to add anything to what we have already heard today in regard to the independent counsel's investigation and those related matters dealing with ethical concerns. So I would rather not belabor those issues, but I would like to turn instead to a subject that Mr. Meese and I have discussed at some length.

That subject happens to be something I have pursued for the last 6 months as a chairman of a subcommittee of this full committee—access to information and the importance of the free flow of information between the Justice Department and the Congress of the United States; specifically, the Senate.

This Judiciary Committee, is charged with the very important responsibility of maintaining an informed awareness of both the activities and the needs of the Department of Justice. And I emphasize informed awareness.

My colleagues would agree that in order to have an informed awareness of the Department of Justice's operations we must have more than just a partial picture.

It is unfortunate, however, that the Justice Department in the past has been reluctant at times to fill in the pieces on matters before this committee. I think we in Congress would agree that we need every piece of any puzzle that we might be trying to put together.

This committee's oversight of the Department of Justice is a necessary function not only for assuring the public that the Department is carrying out its responsibilities, but also to allow this committee to be responsive to any need for legislative reform.

This kind of full and effective oversight is impossible, however, when the committee is denied access to information that we are entitled to. For instance, in August of last year the Subcommittee on Administrative Practice and Procedure which I chair requested information on three earlier closed investigations of shipbuilding claims.

Our request was not met with cooperation from the Department, but, on the contrary, a firm resistance to openness which ultimately prompted the use of subpoenas.

In evaluating a nominee for Attorney General, we will be considering all aspects of that nominee's capability. Included in that consideration is the extent to which the Attorney General designate is willing to open the Justice Department doors to the scrutiny of Congress in the pursuit of its duties.

This is not the first time this committee has raised the issue of information access with a candidate for the Attorney General position. In fact, with each set of confirmation hearings the access issue seems to crop up as a recurring concern.

Many of those times the committee heard cooperative sounding assurances, only to be disappointed later when assurances were forgotten and excuses created.

I am very hopeful and actually quite confident that we will not be repeating that exercise today. After considerable discussion with Mr. Meese, I can now say that I believe he is fully conscious and appreciative of not just my concern, but the entire committee's concern and desire for a dramatically improved access arrangement with the Department of Justice.

Mr. Meese and I have come to some additional, even more specific understandings which I intend to clarify during the questioning period. For right now, Mr. Chairman, I would like to say that I look forward to today's testimony on this and other topics as we consider Mr. Meese's nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Heflin.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Mr. Chairman, a lot has already been said about the position of Attorney General and the responsibility of this committee, and let me be very brief with my remarks.

The Attorney General of the United States assumes many roles—attorney, advisor, administrator, prosecutor. But the most important role of the Attorney General is this Nation's guardian of justice.

Our Nation has thrived for more than two centuries and has been the guiding inspiration for free men and women because of our unique system of justice. The Attorney Generals of the United States in the past have played important roles in either guiding or misguiding that inspiration.

Questions have been raised concerning Mr. Meese's fitness to serve as Attorney General. It is our responsibility to address and resolve these questions. The confirmation process must continue to be thorough. We must ensure that the Attorney General is an impartial enforcer of the laws of this Nation.

Justice may be blind, but it cannot afford also to be deaf and dumb. Also, the arms of justice must not be the servants of self-interest. Each of us has our own ideas about the office of Attorney General. A statement written by a fellow Alabamian who contacted me this week seems to best summarize what we all believe.

The office of Attorney General must represent integrity, honor, honesty, and idealism. We, as Members of the U.S. Senate, and you, Mr. Meese, as Attorney General, if confirmed, must be guided by the awesome responsibility invested by the American people in public officials.

The responsibility upon this committee demands careful and thorough deliberation as well as the use of high ideals and common sense.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Denton.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Mr. Meese, again I congratulate you on your nomination to replace William French Smith as Attorney General of the United States. I welcome you here for what I hope will be a justifiably brief and final chapter of what has turned out to be an extended committee confirmation process.

I commend you and your family on the manner in which you have handled yourselves during the process. From what I know, instead of questioning your integrity, one might question where you have found the nobility to conclude that this underpaid, overworked position is worth the further scrutiny with all of its inquisitorial aspects. You have cooperated fully and completely with the committee, never evading any inquiry. When questions were raised that seemed to impugn your character and reflect badly on you and your fine family, you took the unusual step of requesting an investigation by an Independent Counsel of all the allegations of impropriety. I have studied the charges and the information and agree with the chairman's characterization of the conclusion that the independent counsel completely absolved you of any suspicion of wrongdoing.

I feel the simmerings of innuendo in spite of the clean bill of health to be unwholesome and unfair. Particularly repugnant is the allegation that having been unconvicted of crimes, you somehow remain guilty of unethical behavior. This ugly charge is unethical in itself reeks of character assassination in light of the findings of the independent investigation unless some startling information is revealed. Of course I am in no way being critical of the Senators who may be questioning these aspects of Mr. Meese's background investigation as it is clear that the confirmation process properly affords them this opportunity in terms of the grim tradition of such partisan hearings.

Mr. Meese, I have great confidence in your honesty and your integrity. Furthermore, I know that you will come to the office with a unique background as a criminal prosecutor, as a thorough and resourceful crimefighter whose attitudes are tempered by a strong respect for constitutional rights. You have an understanding of the machinery of American justice that few people can match. Equally important, you understand the principles upon which our system of justice is based.

I look forward to the conclusion of your extended confirmation process, and I look forward to working with you as the next Attorney General. I wish you the good fortune which you deserve.

Mr. Meese, I would simply like to commend you and your family on the manner in which you have handled yourselves during this process. I hope the prospect is for an abbreviated and mercifully just process.

From what I know, I respect you as much as anyone I have met in government. Instead of questioning your integrity, my curiosity is as to where you have found the nobility to conclude that it is worth further inquisitorial agony in order to suffer further underpaid overwork in the remarkably effective service of this country.

I believe you have cooperated fully and completely with the committee, never evading any inquiry. When questions were raised that would seem to impune your character and reflect badly on you and your fine family, you took the unusual step of requesting an investigation by an independent counsel of all the allegations that have been provided.

I have studied the chart; I have studied the investigation. As the chairman has stated, the independent counsel completely absolved you of any suspicion of wrongdoing. That fact has been repeated by a number of Senators. I believe it is the salient fact which we should address because that investigation was by an independent counsel and was thorough.

Personally, I find the simmerings of innuendo, in spite of the clean bill of health, to be unwholesome and unfair. Particularly repugnant to me is the lingering allegation that, having been unconvicted of crimes, you remain guilty of unethical behavior. This ugly charge is indeed unethical in itself and wreaks of character assassination, in the light of the findings of the independent investigation.

Unless there is some startling information revealed in this hearing, I will retain my present attitude toward you, which is one of great confidence in your honesty and integrity and effectiveness.

In terms of standards, I know of no greater matching of the highest standard which would occur when you are confirmed. I believe you will come to the office with the unique background as a criminal prosecutor, as a thorough and resourceful crimefighter whose attitudes are tempered by a strong respect for constitutional rights.

You have an understanding of the machinery of American justice that few people can match. Equally important, I believe, you understand the principle upon which our system of justice is based.

I believe that the reservations expressed against you are justified, considering the partisan aspects of that which traditionally takes place here. I do not feel any personal repugnance toward any of the men or women who may have made what I consider to be repugnant allegations, considering what has already been found out through due process.

But I do regret that you have been, and your family has been subjected to a typical hearing on a fine man. I am not saying that sometimes there are not things found, but if there is anything found on you, it will be the greatest surprise of my brief governmental life.

I look forward to working with you as the next Attorney General and I wish you the good fortune which you deserve.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Pennsylvania, Mr. Specter.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman.

Questions have been raised which the public has a right to have addressed and answered. Attorney General designate Edwin Meese now has his day in this public proceeding to address and answer these questions. I shall listen and make my decision based on the evidence in the record.

I trust this committee will expeditiously do its job. To now make a small contribution to that expeditious disposition, I shall take no more time for an opening statement.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

We have with us an observer today, so to speak, the distinguished Senator from Kentucky, the new Senator, Mr. McConnell. I do not know whether he cares to make any statement. He may become a member of this committee, and if he cares to make any statement, we will be glad to hear from him.

Senator MCCONNELL. Thank you, Mr. Chairman; just one brief observation. I appreciate the chance to be here as an observer today in anticipation of becoming a member of the committee.

It is frankly a thrill for me to be back here, having served as a staff member to a Senator who was on this committee in 1969 and 1970.

I might say to you, Mr. Meese, I welcome you and indicate to you that not only have I read nothing or heard anything that I believe disqualifies you to be Attorney General; it is my belief that you will be judged one of the outstanding Attorneys General upon your departure from that office.

Bearing in mind the chairman's admonition that we not prejudge your qualifications prior to this hearing, I suppose I should say that my mind is open, but I might add not very. I expect to be able to support your nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. At this point I like to include in the record a statement by Senator Dole.

[The following statement was received for the record:]

STATEMENT OF MAJORITY LEADER ROBERT DOLE
SENATE JUDICARY COMMITTEE
NOMINATION OF EDWIN MEESE, III
TO BE
ATTORNEY GENERAL OF THE UNITED STATES

THANK YOU, MR. CHAIRMAN. LET ME EXTEND A WARM WELCOME TO THE NOMINEE AND HIS FAMILY AND TELL HIM THAT HE HAS MY FULL CONFIDENCE AND SUPPORT. I ANTICIPATE THERE WILL BE A LOT OF TOUGH QUESTIONING TODAY, BUT MY FEELING IS THIS PROCESS IS NEARING COMPLETION.

THE ISSUES

WHEN WE FIRST STARTED THESE CONFIRMATION HEARINGS NEARLY A YEAR AGO, THE ISSUES BEING RAISED PERTAINED TO THE NOMINEE'S INDEPENDENCE, HIS COMMITMENT TO SOCIAL JUSTICE, AND HIS WILLINGNESS TO ENFORCE ALL OUR LAWS, EVEN THOSE WITH WHICH HE MIGHT DISAGREE. TO MY MIND, THOSE ISSUES WERE ALL RESOLVED IN FAVOR OF THE NOMINEE, BUT NOW THE DEBATE HAS TURNED TO A DISCUSSION OF ETHICS, "THE HIGH STANDARDS OF OFFICE," AND QUESTIONS RELATING TO THE NOMINEE'S JUDGMENT.

LIKE LAST YEAR'S ISSUES, THOSE ARE APPROPRIATE AVENUES OF INQUIRY DURING CONFIRMATION HEARINGS ON A NOMINEE TO BE ATTORNEY GENERAL. I DON'T BEGRUDGE ANY COMMITTEE MEMBER A REASONABLE AMOUNT OF TIME TO EXAMINE THOSE ISSUES AND SATISFY HIMSELF THAT HE HAS SUFFICIENT INFORMATION TO EXERCISE HIS CONSTITUTIONAL RESPONSIBILITIES. ON THE OTHER HAND, AS WE BEGIN -- AND, I HOPE, SOON END -- THESE HEARINGS, WE SHOULD KEEP IN MIND THESE SAME STANDARDS SHOULD APPLY NOT ONLY TO ED MEESE, BUT TO ALL INVOLVED IN THE DEBATE OVER HIS QUALIFICATIONS.

HIGH STANDARDS

AS A CONSEQUENCE, WHEN THE COMMITTEE BEGINS CONSIDERATION OF ETHICS AS IT PERTAINS TO THE NOMINEE'S FINANCIAL TRANSACTIONS, I HOPE EVERYONE WILL DO THE ETHICALLY RIGHT THING BY PUTTING THOSE TRANSACTIONS IN PROPER CONTEXT AND INCLUDING ALL THE RELEVANT FACTS.

SIMILARLY, WHEN THE COMMITTEE TURNS TO WHETHER THE NOMINEE HAS MET THE HIGH STANDARDS OF PUBLIC OFFICE, I HOPE ITS OWN STANDARD IS ONE OF REASONABLENESS, AND NOT THEORETICAL PERFECTION.

FINALLY, WHEN THE COMMITTEE GOES ON TO QUESTIONS ABOUT THE NOMINEE'S JUDGMENT, I HOPE ITS MEMBERS THEMSELVES EXERCISE GOOD JUDGMENT BY MAKING PRUDENT USE OF TIME AND AVOIDING A REHASH OF ISSUES ALREADY EXAMINED IN THE LAST CONGRESS.

I FURTHER HOPE MEMBERS WILL ADHERE TO THE SENATE'S LONGSTANDING TRADITION OF GIVING GREAT DEFERENCE TO THE PRESIDENT IN HIS CHOICE OF CABINET OFFICIALS. INDEED, ONLY EIGHT CABINET MEMBERS HAVE EVER BEEN REJECTED BY THE FULL SENATE -- THE LAST SUCH REJECTION OCCURRING OVER A QUARTER OF A CENTURY AGO.

LAST YEAR, I QUOTED A STATEMENT SENATOR KENNEDY MADE ON THIS POINT DURING THE CONFIRMATION OF GRIFFIN BELL, AND I BELIEVE THAT STATEMENT BEARS REPEATING. SPECIFICALLY, HE STATED, "THE PRESIDENT SHOULD HAVE SOME LATITUDE IN CHOOSING HIS CABINET, IN APPOINTING PERSONS HE KNOWS HE HAS CONFIDENCE IN AND WHO ARE COMMITTED TO CARRYING OUT HIS PROGRAMS AND POLICIES."

CONCLUSION

MR. CHAIRMAN, MY PURPOSE IS NOT TO IMPLY ANY WRONGDOING ON THE PART OF CRITICS OF THIS NOMINATION, BUT ONLY TO EMPHASIZE THE NEED FOR BALANCE AND FAIRNESS, AND THE FACT THAT THE INTEGRITY OF THE SENATE CONFIRMATION PROCESS IS AT ISSUE HERE, JUST AS MUCH AS IS THE INTEGRITY OF THE NOMINEE.

SO, IN CONCLUDING, LET ME ADD JUST ONE MORE THING -- I HAVE HAD THE OPPORTUNITY TO WORK WITH ED MEESE ON A NUMBER OF OCCASIONS -- I HAVEN'T ALWAYS AGREED WITH HIM, BUT HAVE ALWAYS FOUND HIS POSITIONS TO BE WELL THOUGHT-OUT AND REASONED. HE IS A GOOD MAN, A CARING MAN, A WELL-INTENTIONED MAN. I CAN FULL UNDERSTAND WHY THE PRESIDENT WANTS HIM AT THE HELM IN THE JUSTICE DEPARTMENT, AND I WILL WORK DILIGENTLY TO SECURE HIS PROMPT CONFIRMATION.

The **Chairman**. Now, that brings us to the testimony of Mr. Meese, but we are going to recess until 2 o'clock, at which time we will return.

Let us keep quiet; the meeting is not over yet. Senator Wilson, the able Senator from California, is here to introduce Mr. Meese. Senator Wilson, would you want to do it at this time or would you want to come back at 2 o'clock? I will give you a choice.

Senator **Wilson**. So great is my fondness for the committee, Mr. Chairman, that I will return at 2 o'clock. [Laughter.]

The **Chairman**. We now stand in recess until 2 o'clock.

[Whereupon, at 12:07 p.m., the committee was adjourned, to reconvene at 2 p.m.]

AFTERNOON SESSION

[The committee reconvened at 2:14 p.m., Hon. Strom Thurmond (chairman of the committee) presiding.]

The CHAIRMAN. The committee will come to order.

We are very pleased to have the able and distinguished Senator from California, Senator Wilson, to introduce Mr. Ed Meese at this time to the committee.

STATEMENT OF THE HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman, Senator Biden, members of the committee, I am grateful to have this opportunity, though not for revenge, as someone suggested. I want you to know that I drank in every golden word during the 2 hours prior to lunch. [Laughter.]

Mr. Chairman and members, I was struck by a number of observations made by members of the committee. I was particularly taken by the suggestion of Senator Baucus that this inquiry should not become a search for perfection. Indeed, he remarked that even Senators are not perfect, and that revelation will doubtless be heartening to some who think that we have a different perception of ourselves.

I heard a woman the other evening define the Senate as a body of 100 Members each of whom thinks that he or she should be President of the United States. That is, of course, ridiculous. There are only two or three of us actually qualified, but—[Laughter.]

In any case, Mr. Chairman, I am privileged and proud to reintroduce to you the President's nominee for the office of Attorney General of the United States, my fellow Californian and very close personal and professional friend for almost the last 20 years, the Honorable Edwin Meese III.

It comes as no surprise that President Reagan, having won reelection, has made it one of his first priorities to once again place in nomination as his nominee for the office of Attorney General the dedicated counselor who has served him so long and so well.

Those of us who have known and worked with Ed over the years found it inconceivable that the clamorous charges of illegality hurled at him during last year's hearings could possibly be true. Well, in fact, they were not, as a 6-month investigation by the independent counsel has determined.

I suppose if I were Ed, I might begin by saying that a funny thing happened on the way to the Justice Department. But since I am not the nominee, I can say that there was nothing at all funny about the gauntlet that he and his lovely wife, Ursula, and their children, Dana and Capt. Michael Meese, have been compelled to run.

However, knowing him as I do, I am not in the least surprised that this nominee possessed the courage, the determination, and the simple faith in American justice to ask for and endure probably the most detailed and comprehensive investigation ever performed on a Cabinet nominee.

With the full resources of the Federal Bureau of Investigation, the Internal Revenue Service, the General Accounting Office, and with the staffs of congressional investigating committees at his disposal, the independent counsel has methodically sifted through the intimate details of Ed Meese's personal and professional life. What did the record show?

This thorough, searching investigation revealed that, in the words of the report, "We find no basis with respect to any of the 11 allegations against Mr. Meese." It revealed that there was no basis in fact for the slurs and allegations of criminal conduct made against Ed Meese.

It provided no comfort to those eager to believe such things because they wished to discredit Mr. Meese and the beliefs which he has so clearly and forcefully articulated. It provided no comfort to those who wished, especially in an election year, to discredit the President, whom Ed Meese has served so long and well.

Now, Mr. Chairman, the investigation and the election are behind us. It is time to accept the results of both and move on to the larger record of the nominee as a public servant of rare competence and dedication and a private citizen of singularly generous concern for the high standards of his profession and for the welfare of his community, State, and Nation.

But before doing so, Mr. Chairman, we would be derelict in our duty if we did not reflect upon the real significance not just of the independent counsel's investigation, but of the entire 11 months that have elapsed since I first appeared before this committee to introduce Mr. Meese.

Mr. Chairman, how many amongst us could withstand such an investigation? How many would dare ask for it? Ed Meese could and did. Both he and the nomination process are better for it.

Like so many of his friends and associates, my admiration for Ed Meese and his family has only grown and deepened in the 11 months since I first appeared before this committee to introduce him as the President's nominee for the office of Attorney General.

The real significance of Mr. Meese's request for the investigation of the independent counsel and of his performance and that of his family all through this protracted confirmation process—the real significance, Mr. Chairman, is that Ed Meese and his family have a lot more character than they have money in the bank. Lesser men and women of great material wealth should envy the Meeses their spiritual richness.

It is an irony of these proceedings, Mr. Chairman, that Mr. Meese has come under fire because he is a man whose lack of material wealth has posed practical difficulties to him in performing the kind of all-consuming public service that can only be described as total dedication.

It is the more ironic since Mr. Meese's devotion to his President and to his country have claimed not just the last 4 years, but most of the last 20 productive years when his skills as a lawyer and as a manager could have brought him wealth and ease rather than the substantial sacrifice which he and his family have chosen as the condition of his rendering distinguished public service.

It is fortunate for America that there are such men and women, willing to sacrifice to serve in high office. Our Nation would be much poorer without their gifts. It is sad indeed when their sacrifice includes suffering cavalier character assassination, and our country is fortunate when, like Ed Meese, they have the courage to endure it and to persevere in their service to America.

Now, to the business at hand. Let me begin, Mr. Chairman, by saying without hesitation that Ed Meese is among the most broadly experienced and exceptionally well qualified and prepared nominees for Attorney General ever to come before the Senate. I say that based on a longstanding relationship, personal as well as professional, but more on objective facts that speak for themselves.

It is not simply that I have known Ed for more years than either of us would care to admit; that we go back to Sacramento days when he began his service to this President, then Governor, as a legal adviser.

What is, I think, well known—and I will attempt to save the committee's valuable time—is that he has been teacher, as well as prosecutor and student, of the law; a distinguished trial lawyer who has won the admiration of adversaries and of those on the bench.

Like the man whom he served for 6 years in Sacramento as chief of staff, and later as White House counselor, he has made known that he is a conservative with a taste for innovation, and where laws are inadequate to the task, he accepts the need to rewrite them consistent with cherished constitutional safeguards.

As Attorney General, Ed Meese would do all that is humanly possible to punish those who break our laws, any of our laws—those who terrorize our citizens and disrupt the social fabric of our Nation and neighborhoods alike.

It would seem by now that nearly everyone must feel as if they know this man. On second thought, there are things about him they do not know nearly well enough, things left out of the official resumé, qualities that do not always survive an editor's pencil or an anchorman's stopwatch.

The public record is largely known. It is known that Ed is a product of the Oakland school system, that he earned a degree from Yale in public administration, that he returned to study law at Berkeley after a 2-year stint of active duty in the U.S. Army.

It is known that for 7 years he served the people of Alameda County as a brilliant deputy district attorney. It is well known that he has won the respect of the Peace Officers Association, whom he used to represent in Sacramento, and the California District Attorneys Association.

These things are known, but what I think fewer people know is that Ed Meese has never been willing to settle for the legal status quo. Perceiving the law in all of its majesty, he has understood as few others that the figure of justice is portrayed with scale in hand and that the rule of law requires that the scale be balanced.

His compassion for victims was balanced with a scrupulous regard for defendants' rights. Throughout his career he has displayed a special insight into the judicial process, one that has set him apart as a special scholar and student and special teacher from the many lawyers who are content merely to become competent with the tools of their trade.

He has been an innovator beginning with the time that he served as legal affairs secretary to the Governor of California.

More recently, I think it is well known that he served simultaneously as vice chairman of the California State Organized Crime Control Commission and a member of the ABA's Communities of the Future Committee.

A list of his volunteer activities on behalf of young people in particular, and especially the disadvantaged youths of his home county of Alameda, would consume more time than we have. More importantly, they have consumed years of his life and much of his energy.

From a volunteer legal officer at the county's youth opportunity board as a young lawyer, to the advisory committee of Crittenden Center, the county's first halfway house for parolees and drug offenders, and active participation in Alameda County's Delinquency Prevention and Family Assistance Program, Ed has had literally hundreds of opportunities to put into practice the ideas and ideals bred into him as a young man in a close and loving family. For him, public service has always been an extension of a powerful private conscience.

He has never stopped thinking of America as a family with special obligation toward those members in need. Such qualities of compassion are harder to measure than the offices a man has held or the degrees he has earned. Yet, they lend an extra dimension to a candidate whose credentials are already multidimensional.

One other aspect of his career deserves mention. A Cabinet member inevitably is a program manager, and Ed Meese will bring high administrative skills to the Justice Department. He has demonstrated such talents during the 6 years he served as chief of staff to the Governor of the largest State in the Union, then in his position as vice president for administration at Rohr Industries, a Fortune 500 company, and as founder and chairman pro tem of the President's Cabinet Council on Management and Administration.

Significantly, he has led and become intimately familiar with the details of the administration's Reform 88, the most comprehensive Governmentwide review of management procedures ever undertaken by the Federal Government.

From centralizing computer and accounting procedures to modernizing and taking advantage of the latest private sector methods of procurement, Reform 88 under Ed Meese's leadership aims to prepare Government administration for the high-tech 21st century.

But Senator DeConcini, I think, perhaps put it well. He seems willing to stipulate to the competence of the candidate. Mr. Chairman, there can be no doubt of Ed Meese's qualifications to be Attorney General; not just his competence, but the qualification of high moral character.

Nor is there any question of the country's need to have a successor sworn in to replace William French Smith, who has generously, at no small sacrifice, consented to remain in Washington well beyond his scheduled departure.

For a year now, President Reagan has waited while exhaustive investigations went on and innumerable questions were posed. The results have only confirmed his well-placed faith in the nominee's integrity and competence.

The time has come, I respectfully suggest, for the U.S. Senate to place our seal of approval on the President's choice.

Mr. Chairman, Ed Meese has dedicated almost all his adult life to the service of his country and to the rule of law. This confirmation process would seem almost a restatement of the clever "bon mot" given us by Claire Booth Luce that no good deed goes unpunished.

He has done so with the willingness to make great personal sacrifices of the kind that public life so often involves. Through it all he has remained a man of warmth and kindness, even of generosity to his critics.

Mr. Chairman, the best is yet to come. Today, he stands eager to take up the challenge of a new office and to render the distinguished service he is so exceptionally well qualified to give.

When he is confirmed, Ed Meese will be an activist Attorney General—one of the great ones with the ability to see the need for change and the boldness and capacity to make it happen.

And now, it is my pleasure to present to this distinguished committee an old friend and esteemed colleague, a man whom I am convinced will serve with distinction as the 75th Attorney General of the United States, the Honorable—and I use that word with special emphasis—Edwin Meese III.

[The following was received for the record:]

STATEMENT OF PETE WILSON,
A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA

Senator Wilson: Thank you very much, Mr. Chairman. I am very grateful to have this opportunity.

Mr. Chairman, I am privileged and proud to reintroduce to you the President's nominee for the office of Attorney General of the United States, my fellow Californian and close personal and professional friend for the last 15 years, the Honorable Edwin Meese, III.

I comes as no surprise to me that Ed Meese is once again before us as President Reagan's nominee for the office of Attorney General. Those of us who have known and worked with Ed over the years found it inconceivable that the clamorous charges of illegality hurled at him during last election-year's hearings could be true. In fact, they weren't - as a six-month investigation by the independent counsel has determined.

If I were Ed, I might begin by saying that a funny thing happened on the way to the Justice Department. Since I am not the nominee, I can say that there was nothing at all funny about the gauntlet that Ed Meese, his lovely wife, Ursula, and their children, Dana and Michael, have been forced to run. Knowing him as I do, however, I am not surprised in the least that this nominee possessed the courage, determination and simple faith in American Justice to ask for and endure probably the most detailed and comprehensive investigation ever performed on a Cabinet nominee. With the full resources of the FBI, the IRS, the GAO and the staffs of Congressional investigative committees at his disposal, the Independent Counsel methodically sifted through the intimate details of Ed Meese's personal and professional life. And what did the record show? This thorough, searching investigation revealed that - in the words of the report - "We find no basis with respect to any of the eleven allegations...against Mr. Meese."

It revealed that there was no basis, in fact, for the slurs and allegations of criminal conduct made against Ed Meese. It provided no comfort to those eager to believe such things because they wished to discredit Mr. Meese and the beliefs which he has so clearly and forcefully articulated. It provided no comfort to those who wished - especially in an election year - to discredit the President whom Ed Meese has served so long and well.

Now, Mr. Chairman, the investigation and the election are behind us. It is time to accept the results of both and move on to the larger record of the nominee as a public servant of rare competence and dedication, and a private citizen of singular generosity and concern for the welfare of his profession, his community, state and nation.

But before doing so, Mr. Chairman, we would be derelict in our duty if we did not reflect upon the real significance, not just of the independent counsel's investigation, but of the entire eleven months that have elapsed since I first appeared before this committee to introduce Mr. Meese.

Mr. Chairman, how many amongst us could withstand such an investigation? How many would dare ask for it? Ed Meese could, and did. Both he and the nomination process are better for it. Like so many of his friends and associates, my admiration for Ed Meese and his family has only grown and deepened in the eleven months since I first appeared before this committee to introduce him as the President's nominee for the office of Attorney General.

And the real significance of Mr. Meese's request for the investigation of the independent counsel and of his performance and that of his family all through this protracted confirmation process - the real significance, Mr. Chairman - is that Ed Meese and his family have a lot more character than they have money in the bank. Lesser men and women of great material wealth should envy the Meeses, their spiritual richness.

It is an irony of these proceedings, Mr. Chairman, that

Mr. Meese has come under fire because he is a man whose lack of material wealth has posed practical difficulties to him in performing the kind of all consuming public service that can only be described as total dedication. It is the more ironic since Mr. Meese's devotion to his President and to his country have claimed not the last four years, but most of the last twenty - productive years when his skills as a lawyer and as a manager could have brought him wealth and ease - rather than the substantial sacrifice which he and his family have chosen as the condition of his rendering distinguished public service.

It is fortunate for America that there are such men and women - willing to sacrifice to serve in high office. Our nation would be much poorer without their gifts.

Now to the business at hand.

Let me begin Mr. Chairman, by saying without hesitation that Ed Meese is among the most broadly experienced, and exceptionally well qualified nominees for Attorney General ever to come before the Senate, I say that based on a longstanding relationship, personal as well as professional. In fact, I have known Ed for more years than either one of us would care to admit. We first met in Sacramento, when I was a fledgling member of the California Assembly, and he was an adviser to the governor. As a former assistant district attorney in Oakland, Ed already enjoyed a statewide reputation for his work in bail reform and the state's first pre-trial release program. Both were pioneering efforts - and both are suggestive of the kind of innovative approach that has characterized Mr. Meese throughout his career in the law.

As Attorney General, Ed Meese would do all that is humanly possible to punish those who break our laws, terrorize our citizens, disrupt the social fabric of our nation and neighborhoods alike. Like the man whom he served for six years in Sacramento as chief of staff, and later as

White House Counselor, he is a conservative with a taste for innovation. Where laws are inadequate to the task, he accepts the need to rewrite them, consistent with cherished constitutional safeguards.

It would seem by now that nearly everyone must feel as if they know this man. On second thought, there are things about him they don't know nearly well enough, things left out of a resume. Qualities that don't always survive an editor's pencil or anchormen's stopwatch. The public record states that Ed is a product of the Oakland public school system, that he earned a degree from Yale in public administration, that he returned to California to study law at Berkeley, where he graduated following a two year stint of active duty in the U.S. Army.

It goes on to reveal seven years as deputy district attorney of Alameda County, two of which coincided with duties as official representative of both the California Peace Officers Association and the California District Attorneys Association before the state legislature in Sacramento. As such, he bore responsibility for monitoring hundreds of legislative proposals, dealing with a wide range of criminal activity. A skillful trial lawyer, Mr. Meese's energetic performance as an Oakland prosecutor quickly earned him an enviable reputation among judges, his own colleagues and, most significant of all, among opposing defense counsel, both public and private.

Then, as since, Ed was unwilling to settle for the legal status quo. Perceiving the law in all its organic majesty, he understood, as few others, that the figure of justice is portrayed with scale in hand, and that the rule of law requires that scale to be balanced. Thus his compassion for victims was balanced with a scrupulous regard for defendent rights. Throughout his career, he has displayed a special insight into the judicial process, one that set him apart from the many lawyers who are content merely to become competent with the tools of their trade.

As legal affairs secretary to the Government of California, he served to link the Governor's office with the state's legal, judicial, correctional and law enforcement communities. From 1966 to 1975, he chaired the California Bar Association's subcommittee on legal defense services for indigent criminals. At the same time, he was an active member of the same Association's prison reform project. Consistently, forcefully, he has advocated the right of the poor to adequate legal representation - and the responsibility of the legal profession itself to provide it. Such efforts brand the nominee, not only as a thoroughgoing professional, but a public policy-maker of the most decent impulses.

More recently, he served simultaneously as vice chairman of the California State Organized Crime Control Commission, and as a member of the American Bar Association's Communities on the Future Committee. He has taught lawyers and aspiring lawyers at Berkeley and San Diego. In the classroom, in the courtroom, in the legislative committee room and on the street, this combination of activities has given him a remarkable breadth of experience.

A list of his volunteer activities on behalf of young people, and especially the disadvantaged youths of Alameda County, would consume quite a bit of our time. More important, they have consumed years of his life. From a volunteer legal officer at the county's Youth Opportunity Board, to the advisory committee of Crittenden Center, the county's first halfway house for parolees and drug offenders, and active participation in Alameda County's Deliquency Prevention and Family Assistance Program, Ed has had literally hundreds of opportunities to put into practice the ideas and ideals bred into him as a young man in a close and loving family. For him, public service has always been an extension of a powerful private conscience.

He has never stopped thinking of America as a family, with special obligations toward these members in need. Such qualities of compassion are harder to measure than the offices a man has held or the degrees he has earned. Yet they lend an extra dimension to a candidate whose credentials are already multi-dimensional.

One other aspect of his career deserves mention. For a Cabinet member, inevitably, is a program manager. And Ed Meese will bring high administrative skills to the Justice Department. He has demonstrated such talents during the six years he served as chief of staff to the Governor of the largest state in the union, in his position as vice president for administration of Rohr Industries, a Fortune 500 company, and as founder and chairman pro tem of the President's Cabinet Council on Management and Administration.

Significantly, he has led, and become intimately familiar with, the details of the Administration's Reform 88: the most comprehensive government wide review of management procedures ever undertaken by the federal government. From centralizing computer and accounting procedures, to modernizing and taking advantage of the latest private sector methods of procurement, Reform 88 under Ed Meese's leadership aims to prepare government administration for the high-tech twenty-first century.

He is, in short, admirably prepared to deal with the complexities of managing the Justice Department.

Mr. Chairman, there can be no doubt of Ed Meese's qualifications to be Attorney General. Nor is there any question of the country's need to have a successor sworn in to replace William French Smith, who has generously and at no small sacrifice consented to remain in Washington well beyond his scheduled departure date. For a year now, President Reagan has waited, while exhaustive investigations went on, and innumerable questions were posed. The results have only confirmed his well-placed faith in the nominee's integrity and competence. The time has come, I would suggest, for us to place our own seal of approval on the Presidents' choice.

Mr. Chairman, Ed Meese has dedicated almost all his adult life to the service of his country and to the rule of law. He has done so with the willingness to make great personal sacrifices of the kind that public life so often entails. Through it all he has remained a man of warmth and kindness.

But, Mr. Chairman, the best is yet to come. Today he stands eager to take up the challenge of a new office to render the distinguished sevice he is so exceptionally well qualified to give. When he is confirmed, Ed Meese will be an activist Attorney General, one of the great ones with the ability to see the need for change and the boldness and capacity to make it happen.

And now, it is my pleasure to present an old friend and esteemed colleague, a man who I am convinced will serve with distinction as the 75th Attorney General of the United States, the Honorable - and I use that word with special emphasis - Edwin Meese III.

The CHAIRMAN. Thank you very much, Senator.

Mr. Meese, stand up and be sworn.

Do you swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MEESE. I do.

The CHAIRMAN. Have a seat.

Mr. Meese, you may wish to introduce the members of your family here or any special friends that you care to to the committee.

STATEMENT OF EDWIN MEESE III, OF CALIFORNIA, TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. MEESE. Thank you, Mr. Chairman. I am pleased to have with me today my wife, Ursula; my son, Michael; my daughter-in-law, Ramona; and my daughter, Dana.

The CHAIRMAN. Thank you very much. Would you care to make an opening statement, Mr. Meese?

Mr. MEESE. If I may, Mr. Chairman.

Senator Biden, members of the committee, Senator Wilson, it is a tradition for nominees seeking confirmation by the Senate to say that they are pleased to appear before the committee in charge of their nomination. Well, I assure you that it is no formality for me to say that I am glad to be back before this committee at last.

I want to thank each of you and your staffs for the many courtesies that you have shown to me as I have been preparing for this hearing. I welcome this opportunity to answer any questions that this committee may have, and also to reaffirm the commitments that I made to you a year ago.

I pledge that if confirmed, I will do everything in my power to uphold the Justice Department's long and distinguished history of dedicated service to the Nation, to ensure that there is even-handed justice in the United States, to secure equal protection of the law for all citizens regardless of their race, color, creed, sex, background or economic circumstance, and to enforce the law vigorously, fairly, and in accordance with the Department's tradition of excellence and professionalism.

Senator Wilson has again generously related to you that over the past quarter of a century as a practicing attorney, as a public official, and as a law professor, I have been committed to serving and improving our system of justice. I promise this committee that if confirmed, I will rededicate myself to these goals and to the general advancement of the cause of justice.

There is one specific subject that deserves comment. Almost a year has passed, as many of you have commented earlier today, since the proceedings on my nomination were suspended so that an independent counsel could review certain allegations that had been made about me.

As you will recall and as the chairman stated earlier, I joined in the view that such an investigation was the only effective and fair way to determine the merits of the various issues that had been raised both in the press and before this committee.

I also said that I was confident that the investigation would show that the allegations against me were baseless. An independent counsel was appointed by a special three-judge Federal court. He, together with experienced lawyers, a team of five, and four assistants from the Federal Bureau of Investigation, conducted the 6-month investigation into every conceivable charge and every arguably, relevant fragment of evidence that might have a bearing upon the matters that were relative to the jurisdiction of the independent counsel.

His staff conducted investigative interviews with over 200 witnesses; 45 of those witnesses, as you heard this morning, testified before a Federal grand jury and thousands of pages of documents were produced for examination by the independent counsel and his staff.

I cooperated fully in that investigation. I provided every document requested and answered every question that was asked, whether informally or under oath; my wife, Ursula, did likewise.

I want to emphasize that as far as I know, the investigation left no stone unturned, no fragment of evidence uninvestigated. The independent counsel and his colleagues pursued every lead, reviewed every pertinent document, checked every speculative possibility of wrongdoing, analyzed every difference of recollection or testimonial conflict, and followed every possibility to the end of the investigative road.

The evidentiary analysis and the conclusions of the independent counsel and his staff were presented in a 385-page report. Formally, the report confines itself to evaluating the allegations of illegal conduct. This was the limit of the independent counsel's jurisdiction as set forth by law and as specifically established by the court.

At this level, the report of the independent counsel found no basis for any of the allegations of improper conduct. In fact, however, I would suggest to you, as other Senators have suggested this morning, that the report does much more. It also presents a detailed, factual context for each of its conclusions.

Reading these detailed facts, I believe, supports what I have always known to be the case, which is that I have conducted myself in accordance with the ethical as well as the legal standards of behavior for public officials.

There are two additional observations that I would like to make to the committee about this past year. First, although the year has been difficult for my family and myself, I have nevertheless continued on the present course not because I want some sort of personal victory, but rather because I have spent my professional life pursuing a sincere and deep commitment to improving the administration of justice in this country, and because I want to serve this country and the President who twice has affirmed his confidence in me by nominating me for this office.

Second, I think it is important to remember that the independent counsel's investigation concerned a very small fraction of the matters with which I have been involved over the past 4 years.

I respectfully ask this committee when it considers my nomination to consider both the totality of my public service over these years and the experience and qualifications that I bring to this position.

I pledge to you that I will do everything in my power to bring credit to the office of Attorney General. I would like finally to note that my basic policy views were covered in my testimony before this committee last year and there have been no significant changes.

My priorities continue to be, first, the protection of the law-abiding from the lawless, with due and careful deference to the constitutional rights of all citizens; second, the safeguarding of individual privacy from improper governmental intrusion; third, the vigilant and energetic defense of the civil rights of all Americans; and, fourth, the promotion of legal and regulatory structures designed to conserve and expand economic freedom.

These four objectives are the foundation of a sound system of justice. They are the President's priorities and I assure you, members of the Judiciary Committee, they are mine, also. Thank you.

The CHAIRMAN. Thank you, Mr. Meese. I think you made an excellent statement.

Now, I intend to begin the questioning of Mr. Meese at this time. However, in order to assist Senators in planning their schedules, I would like to announce that it is my plan to alternate questions between both sides and I would ask each Senator to limit his questions to 20 minutes.

After all Senators have had an opportunity to question Mr. Meese, I will then give sufficient time to any Senator who has remaining questions. I hope that we can completely finish with the questioning of Mr. Meese this afternoon and conclude that portion of the hearing by 6 p.m. If we are able to accomplish this, we will then begin with the witnesses tomorrow morning and I intend to call as the first witness the Director of the Office of Government Ethics, Mr. David Martin, and two of his staff attorneys.

Now, Mr. Meese, I have just a few brief questions. First, you have just referred to your qualifications to be Attorney General. Is there anything additional that you would care to say in that connection?

Mr. MEESE. Mr. Chairman, Senator Wilson has gone into some detail and other members of the committee have already mentioned them. Let me just say that in the course of the past 25 years in both professional service and as a volunteer, most of my life has been spent as a lawyer or as a contributor to law enforcement, in the system of justice.

During the course of my 8 years as a deputy district attorney, I had a number of unusual experiences in a wide variety of fields, including serving as the legal adviser to a grand jury in both civil and criminal matters.

I also was, as Senator Wilson pointed out, the legislative advocate for the California district attorneys and peace officers, as well as serving as a member of the senior trial staff, and also participating in some of the major criminal investigations in the county in which I served.

Going to Sacramento, I served as the Legal Affairs Secretary to the Governor of California and, in this capacity, was responsible for all liaison with the judicial, legal, law enforcement, and corrections communities of California. As the chief of staff to the Governor, I served as the cabinet member responsible for criminal justice planning.

Subsequent to that time, going into private business, I continued my interest in the criminal law field by serving as a member of the Criminal Justice Committee of the California State Bar and, as the Senator pointed out, was the vice chairman of the California State Organized Crime Control Commission.

I served as a professor of law at the University of San Diego and, while there, founded and directed the Center for Criminal Justice Policy and Management. And as the Counselor to the President, I have been involved in the Cabinet Council on Legal Policy, helped develop the drug enforcement programs of this administration, and have been involved at both the State and Federal level in virtually every aspect of governmental law.

I hope that this acquaints the committee with some of the more detailed facts of my background and, of course, I will be happy to answer any other questions as to qualifications as these hearings proceed.

The CHAIRMAN. Thank you.

Senator Wilson, we appreciate your presence here and we are delighted to have you to continue if you wish to. If you feel the need to leave, we will understand it.

Senator WILSON. Thank you very much, Mr. Chairman. I will feel free; I will remain until my schedule requires me to be elsewhere. Thank you.

The CHAIRMAN. Mr. Meese, I am totally satisfied with the thoroughness and the results of the Stein investigation. There is no doubt in my mind that there was no wrongdoing on your part.

However, let me just ask, do you feel you were careless in handling your business and your personal dealings?

Mr. MEESE. No, Mr. Chairman, I do not feel I was careless, but I do feel that the circumstances at the time materially hindered me in carrying out my affairs as I would have liked.

The fact that I had spent nearly a year of traveling throughout the country with the campaign and then was here in Washington with regard to the transition, the fact that the exigencies of starting into a new job in a new city in a new administration, the fact that I did not have most of my records with me early on and that we were moving a family back to this area—all of these things kept me from doing the kind of work that I would like to have done on the form 278 when it was initially prepared.

I would also suggest to you that during the course of this 4 years, we have materially improved the procedures both in my office and in my own personal financial affairs so that many of the things that occurred early on would not happen in the future.

The CHAIRMAN. Mr. Meese, you were formerly a high-level official with the Reagan for President and Reagan-Bush campaign and have served as Counsellor to the President for the past 4 years.

Can you assure this committee that you will perform your duties in an independent and uncompromising manner and that you will take whatever action that is necessary to maintain the integrity of the office of Attorney General?

Mr. MEESE. Mr. Chairman and members of the committee, I can and do assure this committee that that will be the case. I would like to point out in that regard that it has been my policy since I first appeared before this committee to avoid any activity or any actions or any participation in the election campaign or any other similar political activities which might in any way indicate any lack of total independence, freedom from political activity or political contacts so that I would be able to appear before this committee having satisfied the same strict requirements that the Attorney General himself should adhere to during his term in office.

The CHAIRMAN. Mr. Meese, I have seen reports in the newspapers to the effect that your lawyers attended a meeting with Mr. David Martin, Director of the Office of Government Ethics.

What do you know about such a meeting, and do you consider this a proper activity by your lawyers?

Mr. MEESE. Mr. Chairman, I know a little bit about it, and I will relate my knowledge to you. First of all, let me say that I do feel that what they did was entirely proper, entirely within the normal activities of due process of law, and exercising their proper function as attorneys for me.

I was notified through the White House Counsel's office that the Office of Government Ethics was considering a draft memorandum from some staff members who had reviewed the report of the Independent Counsel, and that there were questions that had been raised about certain activities referred to in that report.

At my request, the counsel for me contacted the Office of Government Ethics and asked to be heard. As is normal in such matters, in order to provide due process of law, my counsel did meet with the officials—I believe the Director and the senior career member of the Office of Government Ethics—and put forth information.

There were only two matters about which questions were raised, from what I understand. In one case they corrected factual errors that had been contained in the memoranda. In another case they presented information that would correct misconstructions of the standards themselves as applied to my situation.

And as a result of that meeting, the Office of Government Ethics determined that no further action was appropriate. In response, again, to your question, I feel that what my lawyers did was not only ethical and proper, but also what would be required of both parties, both the Office of Government Ethics and my attorneys, under the circumstances.

The CHAIRMAN. Mr. Meese, I have no further questions of you at this time, and as I further stated, we will hear later from Mr. Martin and the Office of Government Ethics attorneys, who are responsible for the preparation of the staff working papers.

We will now turn to the members of the committee, and I will ask whoever is keeping time that we allow 20 minutes to each Senator.

The distinguished Senator from Delaware, Mr. Biden.

Senator BIDEN. Thank you, Mr. Chairman.

Before I begin my questions, Mr. Meese—and I have a number of them—I want to make a comment to my colleague from California before he walks out the door. You raised the question, Senator, how many of us could withstand such an investigation. I think I understand what you mean by that, but I want to make sure I do so that the public does not misunderstand it.

I hope to God that every single, solitary one of us could withstand that kind of investigation. And I hope that we are at a point in this town and in this Government where we err on the side of a higher standard than a lower standard. What worries me is not anything that I know of the Senator from California, but what seems to be in the air these days, and that is not a partisan comment, but it is in the air among Democrats and Republicans, among professional politicians like myself, and that is somehow, we have set standards too high, we keep good men and women out. I quite frankly think that we should disabuse ourselves of the notion that we set too high a standard. As a matter of fact, probably the standards are not high enough. And I would hope that all of us could withstand the investigation that Mr. Meese has gone through, and at least at the criminal level and maybe on all levels has withstood that investigation, and I think he has. But I just want to make clear that I think it is important that everybody understand that we all better be able to withstand it.

Senator WILSON. Senator, I am quite confident of that fact. But I would have to suggest to you that there are a number of people who would not willingly undertake that kind of an examination even though they could get a clean bill of health. And I think we do keep good men and women out. I think it takes a particularly thick hide to be in Government today, and that is very likely a good thing, but I would suggest to you it also poses a cost to society. I think we lose a great deal of talent, and people who are simply unwilling to endure the kind of thing that the Meese family has.

You may argue that we should have high standards. No one can argue with you on that. We have the highest standards. But I would also say that some of the mail that I have received has not been of the highest standard; it has not dealt fairly with the facts that have been alleged about Mr. Meese. And if you are asking me do I think that he has been dealt with fairly——

Senator BIDEN. No, I am not asking—I want to make clear I am not asking that, I am not asking anything. I just want to make sure that we are talking about the same thing, and that is that the standard to which we are—I was responding to your one comment that you may have not meant exactly the way it came out, which was a question that you posed—how many of us——

Senator WILSON. Well, I would hope that everyone here would pass the criminal examination, yes. [Laughter.]

Senator BIDEN. Well, I would hope so, too, I would hope so, too. But you would acknowledge that is not sufficient.

Senator WILSON. I would.

Senator BIDEN. And that is why we are here with Mr. Meese now.

Senator WILSON. I would.

Senator BIDEN. That is why all the talk about the criminal standards, we are ready—at least, I am, I am ready—to concede that point. I want to make clear, though, that that does not make this hearing any less relevant. And that is the only point I want to make to you, that this notion——

Senator WILSON. No. I think the Senate has the responsibility to ascertain far more than that. As other Senators have said more eloquently, I think the report itself goes far beyond that bare frame.

Senator BIDEN. And character assassination is not something new to any of us, is it, Senator?

Senator WILSON. Indeed, it is not. You do have to have a thick hide; I quite agree.

Senator BIDEN. And the office of Attorney General is something that many women and men would go through an awful lot to get through, just as you and I and others would go through a lot to get the job we have.

Senator WILSON. It is difficult for either of us to deny that.

Senator BIDEN. Thank you very much.

Senator WILSON. Thank you, sir.

Senator BIDEN. Mr. Meese, before I begin my questioning on the line I want to pursue, I want to pick out something that the chairman stated. He asked you whether you were careless and whether or not you would have done anything differently. And you said that—you explained—which seems plausible to me—that having essentially lived out of a suitcase and on an airplane and bouncing around the country, with the pressure of campaigns and moving, that you in fact did not have things that together as you now have them together. And you made the statement—and I am paraphrasing—that there are some things that happened that would not have happened, that happened before but that would not happen now.

Can you give me an example of what one of those might be?

Mr. MEESE. Well, I think, Senator, for one thing—and I would be glad to elaborate on other aspects of this—but I think particularly my financial records and other data on which I base my 278, the financial disclosure forms, are available and intact. As a matter of fact, one of the things that has happened over the course of the last year because of the independent counsel's inquiry has been a complete accounting and review of all of my financial records and papers, most of which have been examined by the independent counsel.

Also during this period of time, a great deal of additional knowledge has come to me and the members of my staff in filling out these financial disclosure forms, as it has to most of the people in the administration, as people become more familiar with what is required in what are fairly complex forms.

This is what I was referring to, among other things.

Senator BIDEN. Is there anything in the conduct of your relationships with those persons whom you have named, you have heard mentioned time and again—Mr. McKean, Mr. Barrack and others—that would not occur today, that occurred then?

Mr. MEESE. Senator, I think that in the course of the 4 years, I have learned a great deal about how people view things, or how people might view things. And I can assure you that I have a much higher level of sensitivity to these matters now than I did when I arrived in Washington. And I can assure you that I would take great pains to avoid any kind of a situation or circumstance that might give rise to a misunderstanding or a misinterpretation of my acts or what I intended.

Senator BIDEN. I would like to ask you some questions now which do not relate to any specific set of facts or circumstances. But I want to ask you instead some general questions along the lines we have just begun to pursue, about ethical issues raised in these hearings.

I am particularly concerned, as all of us are, and I hope you are, about the integrity of the office of Attorney General and that that not be compromised.

In your letter to Mr. Martin—who, again, is at the Office of Government Ethics—you say that you will recuse yourself from participation in any matter which, in your judgment: "* * * is desirable for me to do so in order to avoid an appearance of impropriety."

What kind of matters does this include, this appearance, in your judgment, avoiding the appearance of impropriety? What I would like to pursue with you, at least in the beginning of this first round of questioning that I have, is how do you interpret "appearance of impropriety"? What standards will you look to for guidance in making these interpretations, and what other actions will you take, other than recusal, to avoid the appearance of impropriety, if any?

Mr. MEESE. Well, Senator, I will do a number of things. One of them was suggested by Senator Mathias at the last hearings, at which time I committed myself, and I recommit myself today, to maintaining a log of all visitors and telephone calls, for example, so that any contact with potential litigants or current litigants, and so on, can be clearly set forth. I think this is one way that you preserve any possibility of impropriety.

I think also, I would consult with the Office of Legal Counsel and the Office of Professional Responsibility within the Department of Justice, making them fully aware of all of the small amount of financial holdings which our family has, most of which was received by my wife by inheritance, so that they would be alert to counsel me and advise me on any matter that might be a potential conflict of interest, in which case I would recuse myself.

I have listed on that same letter that you referred to the very small holdings we have and a few stocks—which I know, as a result of talking with the Department of Justice through the White House Counsel's Office—that there may be litigation involved, and we would upon confirmation divest ourselves of these holdings, even though they are de minimus in value.

Senator **Biden**. Mr. Meese, are there any matters which are the subject of the investigation by the Independent Counsel which in your mind now would in fact create an appearance of impropriety as you meant it when you stated it in your letter of January 23, 1985, just several days ago? Let me make sure—are there any matters which have come up in the investigations of the Independent Counsel that would now, in your mind, meet your standard of having created the appearance of impropriety?

Mr. **Meese**. Senator, retroactively, that would be a subjective judgment. But I can say that I would take pains to avoid any possibility of such an appearance, and so some of the things, if they occurred in the future, I would probably do differently, yes.

Senator **Biden**. It is not just an idle question, because it is the only way for me to judge whether or not your standard of impropriety is consistent with what mine is. Unfortunate as it may be, as Senator Baucus pointed out, the Constitution is vague on advise and consent, and I am guided only by my conscience, and therefore I, as presumptuous as it may seem to people, I am judging you by my standards of what constitutes propriety, notwithstanding the fact that the Senator from Utah and the Senator from Wyoming indicated that the appearance—or, excuse me, the Senator from Nevada indicated—that the appearance of impropriety should not be a standard by which we judge people. In fact, you agree that it should be a standard, at least to some degree, or you would not have indicated in your letter to the counsel, David H. Martin, of the Office of Government and Ethics, that you would in fact recuse yourself where there was an appearance of impropriety.

Now, there are a number of things that occurred that are in contention, maybe not in your mind, but in the minds of many of my colleagues and myself and people outside this institution, that appear to them to have been, or at least created, the appearance of impropriety.

Can you help me out in going back through any of the more celebrated aspects of the investigation by the Independent Counsel where you now could say, "I thought I was acting totally ethically, but now, knowing what I know, if that same instance came up again as Attorney General, I would not do that thing now." Are there any such incidents?

Mr. MEESE. Senator, as I mentioned in the letter to Mr. Martin, and as I answered you a few moments ago, I would seek to avoid any circumstance which could be misunderstood or misconstrued in any way.

Now, at the time of the various incidents that you have related or you have referred to, I certainly did not intend to afford any appearance of impropriety or wrongdoing, and I honestly believe that to an objective person, I did not create such an appearance.

However—and this is why I am saying prospectively—as long as anyone would raise a question, anyone who for whatever subjective reason would raise a question, I would try to avoid that circumstance in the future. So that is why, in some of the situations which have occurred, I would do things differently in the future to avoid any possibility of someone raising that kind of a question.

Senator BIDEN. Now, let me ask you about Mr. McKean. When did you first meet him, if you recall?

Mr. MEESE. I met Mr. McKean on June 13, 1981.

Senator BIDEN. And when was the meeting where Mr. McKean's name was discussed as a possible appointee within the Reagan administration, the meeting that you attended?

Mr. MEESE. It was sometime in July 1981. I believe it was around July 13.

Senator BIDEN. Roughly a month later, after you had first met him?

Mr. MEESE. Yes, sir.

Senator BIDEN. What did you know about Mr. McKean's business acumen or background by the time that meeting in which his name was mentioned as a possible appointee—what did you know about his business acumen at that point?

Mr. MEESE. I knew at that point, from conversations largely with colleagues of mine, and from meeting Mr. McKean himself, and possibly from talking with others beyond that circle, of his long association and service as an accountant for the California Trucking Association, whose officers and members I was well-acquainted with, and I knew a great deal about their overall success. I knew that he had served as the accountant and financial manager for one of my colleagues in the White House, again, quite successfully. And I knew on the basis of my own experience with him that he appeared to be well organized, a good advisor, and to have a good problem-solving approach to difficult problems.

Senator BIDEN. Would you characterize for the committee the nature of that July 13 meeting at which his name was mentioned as a possible Reagan appointee somewhere in the Government? Can you tell us who was present, and how would you characterize that meeting?

Mr. MEESE. Well, this was a personnel review meeting which was held roughly on a weekly basis. At this particular meeting, the people that I remember being present in addition to myself were Jim Baker, the White House Chief of Staff; Michael Deaver, the Deputy Chief of Staff of the White House; I believe, Penn James, who was the Assistant to the President for Presidential Personnel. There may have been one or two other people present in more of a subordinate capacity to him, but it was basically the four of us who were at the meeting.

Senator **Biden**. How was McKean's name brought up?

Mr. **Meese**. The Office of Presidential Personnel had a list of people for the part-time position of Postal Board of Governors, but they said that they were not too well satisfied with the names that they had on their list. At that time, Mr. Deaver, a colleague of mine who was serving with us in that meeting, said that he knew—it just kind of came to him—that he knew what he described, I believe, as "a terrific person for that kind of job, who was a good businessman, and who would believe thoroughly in the President," and he mentioned the name John McKean. And then he turned to me, and said: "You know him, too, Ed," and I believe I said something like: "Yes, I do," and he——

Senator **Biden**. You're in the boat, too, Ed, right?

Mr. **Meese**. Beg your pardon?

Senator **Biden**. He said, "You're in the boat, too, Ed."

Mr. **Meese**. Oh, he didn't say it quite that way, but he said, "You know him, too, Ed," and I said, "Yes. I think he'd be good." And then I believe I may have said, "He's my accountant," or words to that effect. I'm not sure whether I did, or not, although Mr. Deaver knew that already.

Senator **Biden**. Why didn't you at that time say, "I want to make it clear to you all in here now, I have a financial arrangement with him, beyond him being my accountant. I mean, I owe the fellow money"?

Mr. **Meese**. Well, because basically I didn't—I owed him only as the trustee. In other words, I had no personal debt to him as an individual. He had arranged the loan for me as my accountant, as the Independent Counsel found in their depiction of the transaction, and it was an arm's length business transaction. It was not as though I owed him the money, personally.

Senator **Biden**. Did you know at the time, that the loan that you had received was from Mr. McKean in his capacity as a trustee acting on behalf of a trust, or, did you think it was from Mr. McKean directly?

Mr. **Meese**. I thought it was from Mr. McKean's accounting firm, not Mr. McKean personally. In other words, in my law firm where I practiced, the partners in the law firm often had a fund which they used for investments, and I thought it was the same kind of a thing.

Senator **Biden**. Well, then why, on your disclosure, did you list it as a debt to McKean, and not to the association?

Mr. **Meese**. Well, I put it down as J.R. McKean. I did not put trustee. I later corrected it to put trustee in, because that was the proper designation. I didn't think of it as adding the term trustee. I should have put J.R. McKean accounting firm, or whatever. But it was no attempt to hide anything.

Senator **Biden**. When did you make that correction?

Mr. **Meese**. I made that correction, I think about a year later.

Senator **Biden**. Now, what do you think would have transpired in that meeting, had you said, "By the way, I owe a trust for which McKean is a trustee—was it $40,000 at that time?"

Mr. **Meese**. At that time I believe it was $40,000.

Senator **Biden**. $40,000?

Mr. **Meese**. Nothing would have transpired. I mean nothing further. Nobody would have paid any attention.

Senator **Biden**. That worries me. I'm not being facetious. That worries me, and it goes back to a little bit of what I was—why I engaged my colleague from California a little bit, because as I understand it, in the Office of Government Ethics, and in other parts of the Justice Department, although there is no—not that that's part of the Justice Department—in the Justice Department, although there is no proscription, specific proscription, all of us are encouraged to disclose as much as we can, where there might be any appearance of impropriety. You mean, no one would have asked you, "In your mind, well, gee, do you owe it to him? or what do you think? or maybe you shouldn't participate in this, Ed, or——

Mr. **Meese**. Well, Senator, I think—the reason I say that I don't think anything would have happened differently is because this was not a vote-taking, decisionmaking kind of meeting.

Senator **Biden**. What was it then?

Mr. **Meese**. It was a meeting which reviews matter, in which we usually take negative action, if at all, to stop a matter going forward to the President, rather than a positive action, and, in fact, in this case, further steps had to be taken. The name had to be then checked out thoroughly, as it was, by the Office of Presidential Personnel, and then came back through the system, and ultimately to the President.

Senator **Biden**. That beeper I guess means my time is up. Let me conclude. I have more to ask about McKean, but let me just make one comment to you as I go through the rest of—and I imagine others will—and I may—if it's redundant, I will not go into them myself. But I hope you, at a minimum, can understand why, it's as Senator Baucus says, "A close call for some of us." Here you have a debt which you list on your form as being one owed to an individual. Then, you say, in sworn testimony, that you knew it was to the trusteeship, and you change it later to the trusteeship. Now it is believable, what you said. I'm not calling you a liar. It's very—very plausible, what you said. But as we go through this, what worries me is, there are so many of those types of failures to recollect, or imprecise listings, that that's why some of as are concerned. And so I hope, as we pursue this, which we will for the remainder of this afternoon, and possibly tomorrow—I don't know—that you will, knowing what our concern is, wherever you can allay that concern, and go beyond what the question may be eliciting on its face, you will do so.

Mr. **Meese**. Senator, I will——

Senator **Biden**. That's what needs to be dispelled, in my mind, in order for me to vote yes

Mr. **Meese**. Well, Senator, I will try to allay those concerns. I want to make it clear that, at the time, the failure to put trustee in was remedied as soon as it was brought to my attention, that it was not something that I consciously tried to conceal anything from anyone. I think that's been well pointed out in the independent counsel's report, and that a correction was made, and, frankly, that's the kind of thing that I think would be handled in much better fashion, or is being handled in much better fashion now, and will be in the future.

Senator **Biden**. My time's up. Thank you very much.

The **Chairman**. Senator, I believe you used 25 minutes, so we'll just give the rest of them 25 minutes. The distinguished Senator from Maryland.

Senator **Biden**. Thank you, Mr. Chairman. If I'd known that, I would have gone on for 30 Mr. Chairman.

The **Chairman**. I might have stopped you, though.

Senator **Mathias**. Mr. Meese, in your statement today, you referred to the fact that you spent 1 year on the campaign trail in 1980, the year before you came to Washington. A few years before the Watergate special prosecutor's report was written, a member of this committee, a friend of many of us here, a man who sat on this committee for many years, Sam Ervin, made the observation that: "To my mind, there is something incompatible with marrying the function of the chief political adviser with that of the prosecutor of crimes against the Government." That statement was also made during the confirmation hearing for an Attorney General of the United States. Several years later, those words acquired a prophetic ring when the Watergate special prosecutor's report was published. It contained this language:

> The President should not nominate, and the Senate should not confirm as Attorney General a person who has served as the President's campaign manager, or in a similar high-level campaign role. The campaign manager seeks support for his candidate and necessarily incurs obligations to political leaders and other individuals throughout wide geographical areas. If he then takes a high position in the Justice Department, he may take, or appear to take, official actions on the basis of those commitments, rather than on appropriate legal and policy grounds.

Now, my question to you is what do you think of this rule, as enunciated by Senator Ervin and by the Watergate prosecutor's report. Do you think it's a bad rule that is not worthy of being observed? Or do you feel that for some reason, your case would not fall within the rule?

Mr. **Meese**. Senator, I think that it is basically a good rule, particularly if the reason for the rule is understood, which you enunciated in part, and I also feel that the rule would not and does not apply to me. For one thing, I was not in the capacity of the campaign manager, or the other types of things. When they talk about campaign official, they elaborated in that particular statement of Mr. Jaworski, and the others on the Watergate prosecution staff, they talked about national campaign chairman, national finance chairman, party chairman, national chairman, or party national finance chairman, and they listed the type of jobs. The job I had with the campaign was not one of those. I was a deputy campaign manager working in the fields of policy and administration, not in the political aspects.

I was not a chief political adviser, by any means, as Senator Ervin referred to. I also think that the reason for the rule is, as you started to put out there, that the fact that a person necessarily, if they are in the political side of a campaign, does collect obligations, perhaps, or could collect obligations, or appear to collect obligations. I believe the language of that report goes on to say there are certain chits which later may be called. I want to assure you, that at no time in 1980, or at any other time, have I ever incurred any personal or political obligations to anyone. So there are no chits, as far as Ed Meese is concerned, that could ever be called by anyone, or could there ever be the appearance of this.

But more than that, 4 years later, when the President had nominated me for Attorney General, I specifically deferred any political activity, even to the point of not going to fundraisers for Members of Congress or candidates for Congress, or took no part whatsoever in the 1984 campaign for the Presidency and Vice Presidency, specifically to go further to avoid any possibility of being put in a position where someone might feel there was any connection between political activity and the Office of Attorney General.

Senator MATHIAS. Well, beyond the question of calling in chits, there is another objection that has been raised to someone who's been in a close personal, or political relationship with the President. The arguments is that an Attorney General with that background would lack the objectivity to stand back and look at the President's situation, and to advise him, and to advise the Nation in an independent way about matters of policy, matters of law, and matters of constitutional interpretation. Do you feel that your relationship with the President would in any way inhibit you?

Mr. MEESE. No, Senator, I do not. As a matter of fact, going back now almost 20 years, some 18 years, I have probably taken a more independent stand, brought the President, and earlier the Governor, more bad news, and told him more things that he couldn't do or shouldn't do in giving him legal advice, than almost any other person, and I would continue that independence and that willingness to scrupulously uphold the law and give the President the best legal advice possible, which is, of course, the best way in which I could serve him as well as the Nation.

Senator MATHIAS. On a related topic, the present Attorney General, William French Smith, has come to the Department of Justice after a very extensive private practice. He had a number of business relationships of various kinds during his years as a practicing attorney.

And when he entered the Justice Department, he agreed with this committee that he would recuse himself in certain broad categories of cases because he felt that his prior dealings with the parties to those cases, or with the issues that were involved, would create the appearance of a conflict of interest.

Now, your experience has been somewhat different, but certainly, the case may arise in which you will feel it necessary to recuse yourself. What is the standard that you would employ for determining whether or not your participation in a given case would give an appearance of conflict?

Mr. MEESE. Senator, I would employ the standard that was mentioned in my letter, to which Senator Biden referred earlier, that based upon advice from the appropriate bodies within Justice, the Office Of Legal Counsel, and the Office Of Professional Responsibility, I would recuse myself in any situation in which there might be an appearance of conflict of interest or impropriety.

Senator MATHIAS. Well, in order for them to give you that advice, in order for them to tell you where not to go, you've got to tell them where you've been.

Mr. **Meese**. Yes, Senator, and one of the things that is stated in that letter is all of the property holdings, small as they might be, as well as I would make a full disclosure to them of all past business relationships, many of which are mentioned in that letter.

For example, the fact that I have retirement funds, based on past employment, is revealed in that letter, as well as a complete listing of any other business ventures that I might have been in, that would be relevant.

Senator **Mathias**. Previous legal associates?

Mr. **Meese**. I would go beyond that and would give a full and complete dossier, if you will, to those offices, of lawyers with whom I have been in law practice, as you say, legal associates as well as litigation in which I may have been involved.

Senator **Mathias**. Have you had occasion to apply this standard of recusal in the last 4 years, since you've been in the White House? Have there been instances in which you have felt that it was desirable to step back?

Mr. **Meese**. There are very few, actually, because my work in the White House is serving as a policy adviser to the President, and in heading up the policy activities of the White House. It's not as a decisionmaker, and therefore, there have been very few situations.

One thing I have done, however, in the course of the past year because of this nomination, if you will, is recuse myself from key executive branch decisions relating to the Department of Justice. For instance, I did not participate in the budget deliberations relating to the Department of Justice this year, because I felt, there might be a possibility of a conflict of interest.

Senator **Mathias**. Let me turn to a newer issue, a question which I think has to be resolved at some point before the end of these proceedings. That's the matter of counsel fees for the independent counsel proceedings.

There has been a petition submitted on your behalf seeking reimbursement in accordance with the provisions of law, which were adopted in the 1983 amendment to the Ethics in Government Act. The petition asks for $700,000 in legal fees. Now, are you contractually obligated to your counsel for the payment of that sum?

Mr. **Meese**. Yes, Senator, I am.

Senator **Mathias**. Is that a written contract, or is it an oral understanding?

Mr. **Meese**. It is a written retainer agreement which I executed, along with my wife, and with the attorneys, early on in the pendancy of the case involving the independent counsel. I believe it was dated June 1984

Senator **Mathias**. Is there a copy of that in the record?

Mr Meese. I will be happy to make a copy available to the committee, and to you.

Senator **Mathias**. Mr. Chairman, I would ask that that be made a part of the record.

The **Chairman**. Without objection, so ordered.

[Copies of the retainer agreement follow:]

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037
202 785-9700
TELEX: 892608 DSM WSH

ONARD GARMENT
DIRECT DIAL
202 828-2236

[illegible] MADISON AVENUE
NEW YORK, N.Y. 10022
212 [illegible]

730 LITTLEFIELD BUILDING
AUSTIN, TEXAS 78701
512 [illegible]

June 18, 1984

Mr. Edwin Meese III
1075 Spring Hill Road
McLean, Virginia 22102

Re: Retainer Agreement

Dear Mr. Meese:

This letter will confirm our understanding regarding legal services rendered and to be rendered by Dickstein, Shapiro & Morin on your behalf. Our engagement involves representation in connection with the investigation by Independent Counsel commenced April 2, 1984 pursuant to provisions of the Ethics in Government Act.

Fees for legal services rendered during the engagement will accrue at the usual hourly rates in effect for attorneys, paralegals and staff performing work on your behalf. In addition, actual out-of-pocket expenses reimbursable to the firm will accrue as incurred for necessary services, including such matters as travel, printing and reproduction, long-distance telephone calls, local transportation and the like.

It is contemplated that if the conditions of Section 593(g) of the Ethics in Government Act are satisfied, we will request the appropriate Division of the United States Court of Appeals for the District of Columbia Circuit to award reimbursement for the fees and expenses incurred during this engagement. If, however, such conditions are not met or if having been met, the Court nonetheless were substantially to deny payment thereunder, we will bill you for our services.

If the foregoing correctly sets forth the agreement between us, please so indicate in the space provided below and return one executed copy of this agreement to us.

We are pleased to have the opportunity to represent you in this matter.

Very truly yours,

DICKSTEIN, SHAPIRO & MORIN

By Leonard Garment
Leonard Garment
A Member of the Firm

AGREED TO AND ACCEPTED:

Edwin Meese III
Edwin Meese III

Dated: 12 July 1984

2101 L STREET, N.W.
WASHINGTON, D.C. 20037

June 18, 1984

Mr. Edwin Meese III
1075 Spring Hill Road
McLean, Virginia 22102

Re: Retainer Agreement

Dear Ed:

This letter will confirm our understanding regarding legal services rendered and to be rendered by me on your behalf. My engagement involves representation in connection with the investigation by Independent Counsel commenced April 2, 1984 pursuant to provisions of the Ethics in Government Act.

Fees for legal services rendered during the engagement will accrue at my usual hourly rates. In addition, actual out-of-pocket expenses reimbursable to me will accrue as incurred for necessary services, including such matters as travel, long-distance telephone calls, local transportation and the like.

It is contemplated that if the conditions of Section 593(g) of the Ethics in Government Act are satisfied, I will request the appropriate Division of the United States Court of Appeals for the District of Columbia Circuit to award reimbursement for fees and expenses incurred during this engagement. If, however, such conditions are not met or if having been met, the Court nonetheless were substantially to deny payment thereunder, I will render my bill to you for my services.

If the foregoing correctly sets forth the agreement between us, please so indicate in the space provided below and return one executed copy of this agreement to me.

I am pleased to have the opportunity to represent you in this matter.

Very truly yours,

By
e. robert (bob) wallach

AGREED TO AND ACCEPTED:

Edwin Meese III
Edwin Meese III

Dated: 12 July 1984

Mr. MEESE. I will furnish that, if I may, at the next recess.

Senator MATHIAS. Of course the question will arise as to what happens if the court denies some part of that fee.

Mr. MEESE. I've discussed various contingencies with my attorneys, and a lot depends upon what the court itself rules. Obviously, the court has it within its power to determine, in effect, what the fee should be in this case, and my attorneys have agreed with me, essentially, that they would accept the ruling of the court on the amount of the fee.

Senator MATHIAS. Well, this is, of course, the first time that this provision of law has been applied. This is one of the cases where we don't have standards. But I think that at some point during these proceedings, the committee will need to know what position you're going to be left in, under your contract with the attorney, if the court denies some part of the fee.

Mr. MEESE. I think, Senator, that obviously, whatever fee is set by the court—and I think we have to assume that the court will act reasonably under these circumstances. As I say, my discussions with the attorneys have led me to believe that they will accept that as the fee, based upon what the court ruling is. I think this is similar to a recent case in New York, Senator, where the court did determine the fees in the so-called agent orange case. It's a similar situation.

Senator MATHIAS. In the agent orange case, was there an attempt to collect the difference in fees from the parties?

Mr. MEESE. No, there was not.

Senator MATHIAS. At that point the balance was waived?

Mr. MEESE. There was not—it was a fee setting by the Court, and I think essentially the same thing would apply in this case.

Senator MATHIAS. So that that would be a full and complete discharge of any obligation?

Mr. MEESE. Yes. That is my belief, Senator, based, of course, on what the language of the Court's decision is.

Senator MATHIAS. Well, we're all speculating on that because we can't prejudge what the Court will do in that case. Let's turn to the operation of the Department.

This committee has, as one of the important areas of its jurisdiction, the matter of juvenile justice, how we treat the young offender. The distinguished Senator from Pennsylvania has shown great leadership in that matter. In 1974, when the Juvenile Justice and Delinquency Prevention Act was first passed, we established a coordinating council on juvenile justice and delinquency prevention. The idea was to bring together all the high-ranking Federal officials with responsibilities in the juvenile justice area: the Attorney General, the Secretary of Health and Human Services, the Secretary of HUD, of Labor, of Education, and other appropriate officials. We thought that working together, these officials could intensify their efforts to promote the goals of the Juvenile Justice Act, and could oversee how well the statutes were working. We focused on two of those goals in particular: the removal of status offenders from correctional institutions, and the separation of juveniles from adult criminals in jails.

Now, unfortunately, in recent years, the coordinating council has been very inactive, it's been moribund, and I think that the administration of justice has suffered from a lack of this coordinating activity.

Have you considered what you would do as Attorney General, to try to promote the enforcement of the Juvenile Justice Act, and to improve the administration of justice as it affects young people in the country?

Mr. **Meese**. Yes, I have, Senator. I am familiar with that act, because in 1975, President Ford appointed me to the National Advisory Committee on Juvenile Justice And Delinquency Prevention, another one of the groups created by that act, and I served in that capacity for somewhere between 2 and 3 years. I also have spent a great deal of time in juvenile delinquency prevention activities in the city of Oakland, where I served as a deputy district attorney. I was the district attorney's representative on a similar coordinating body there, and also helped to establish delinquency prevention councils in several of the cities of Alameda County. So I am very much committed to the idea of interagency coordination for the prevention of juvenile delinquency, and for juvenile justice programs.

It would be my purpose, if confirmed as Attorney General, to revitalize that interagency council, to establish regular meetings among the Department heads and Agency heads that were involved, and to use that as a means of increasing the Federal effort, to make sure that all of the Departments and Agencies that had resources that might be of assistance to State and local governments in juvenile delinquency prevention would be coordinated and would be exercising their maximum effectiveness.

Senator **Mathias**. And we can count on you to stimulate, to revitalize this coordinating council?

Mr. **Meese**. Yes, Senator, you can, and it's a matter which I would be very happy to return to this committee periodically, and discuss with you, to give a progress report, if I'm confirmed.

Senator **Mathias**. We'll be asking. On the matter of National Security Decision Directive 84, you were involved in the White House with the decisions that were made. Although that document is no longer in the headlines, the issues that it raises are still very much with us. Chief among these is a requirement for prepublication review of the writings and speeches of former Government employees. Now, although the administration has agreed to extend the ban on the use of the prepublication review agreement which arose under that document, we have learned that there have been more than a hundred thousand public servants who have been required to sign some slightly more limited agreements, that were issued, actually, prior to the National Security Decision Directive No. 84.

These agreements were not authorized by statute. So, even if the directive remains in the deep freeze, the problem is still there. What is your view on the need for a requirement that former Government officials submit their writings for preclearance by some form of Government censorship? Do you think that there is any better way to safeguard essential national secrets?

Mr. **Meese**. Senator, I believe there is some requirement for a system to prevent the kind of information we're talking about—and this is a very limited category of information. It's called specialized, compartmentalized information, and it's the highest level of classified information, national security information.

The people that you're referring to, that have signed such preclearance agreements, while they're in Government service, are people who are working primarily for the CIA and the National Security Agency. It's a very special class of people who are among the limited group that have access to this information.

Now that sounds like a lot of people, but they are in these two agencies. I think it is necessary that there be some system to assist these people in making sure that they don't, as they subsequently leave Government and write about their experiences, inadvertently give away information about sources and methods of intelligence gathering, especially—the special category of classified information.

As far as what might be done in the future, there may be better ways than what we have at the present time, and this is a subject on which, and as the administration has indicated, I personally would be happy to work with the Congress, the Senate, to try to find better ways, or, at least to explore whether there might be better ways of providing the same degree of assurance to the individuals involved, that they are not inadvertently violating the laws relating to the release of classified information, and also protecting the national security, in being sure this information is not somehow released.

Senator MATHIAS. But you're not talking about a broad prepublication ban. You're talking about——

Mr. MEESE. I'm talking about——

Senator MATHIAS [continuing]. CIA and NSA?

Mr. MEESE. That is what the present law provides. Yes, sir.

Senator MATHIAS. Do you have any contemplate that you might recommend legislation on the subject of prepublication review?

Mr. MEESE. I think it would be a matter of trying to work with the Senate and the House, with those committees that are involved, to find out, to find a way, if it is to be extended, that would be satisfactory, and that would meet the test which you have implied, and that is that it not unduly impose upon the privacy of the governmental official, particularly as they leave Government, but at the same time, provide a degree of assurance to them, that they're not violating the law by releasing classified information.

That's the reason why this, why I participated in the recommendation to the President, that NSDD-84 be suspended until we could work out such an arrangement that would meet the agreement of the Congress, as well as satisfy the legitimate needs of the executive branch.

Senator MATHIAS. Of course, what's troubling to me, and I think troubling to a number of other people, is that we haven't limited the ban just to CIA and NSA. There are a number of agencies that have now required written agreements on prepublication review from their employee. I believe the Justice Department is among them. Do you think the time has come to make a review, a formal study of how these systems work? What's been the overall effect on national security? What's been the overall effect on personnel practices? Has it encouraged or discouraged people of talent from coming into Government service?

I think that time has come. What do you think?

Mr. **Meese**. I would agree with you, Senator, and I would be very happy to recommend to the President such a review, and to participate in leading such a review myself.

Senator **Mathias**. I think that could be very useful. Of course, there is an alternative in the form of a criminal ban on unauthorized disclosure. We've had a long history of reluctance to restrain speech in advance. I think that goes hand in hand with the idea that, in proper circumstances, prohibited speech can be punished after the fact. But there is no general criminal statute on the books to punish unauthorized disclosure of even highly classified information.

Now maybe this should be changed.

Mr. **Meese**. I think that such a proposal could be part of the review that you suggested earlier, Senator, and look for alternative means of handling this particular problem. I might add, that one of the things I think also should go in to such a review, and which I have been probably one of the primary advocates in the administration, is to decrease the amount of classified information that is promulgated by the Federal Government, or at least that is classified. I think that it is noteworthy that this administration has made a considerable decrease in the amount of information that is classified on an annual basis from prior administrations, but I think we have a long way to go.

I think many things are classified that don't require it.

Senator **Mathias**. The prepublication review requirement got more attention than any other part of National Security Decision Directive 84, but there were other aspects to it. One of them was a major expansion of the use of the polygraph. That portion of the directive was also suspended last year, but in the meantime, legislation has addressed the issue with respect to the Department of Defense.

So the question arises now, what about other agencies specifically the Department of Justice? Do you plan to seek authority to subject more Justice employees to lie detector tests, for routine security screening, or as part of possible investigations of breaches of security?

Mr. **Meese**. Senator, I would have no basis to seek legislation or authority to do that. At the present time, I don't honestly know how much is done in the Department of Justice. My view, which I have had the privilege of discussing with you on other occasions, about the polygraph, is that it is an instrument that is a useful investigative technique, but is by no means a lie detector as such.

In proper investigative use under the auspices of a qualified professional operator, the polygraph can have some utility in the course of a total investigation, but I think its uses are somewhat limited. I don't believe in widespread use of the polygraph.

I think, for the most part, it's been used as a screening device. In my own experience, I've used polygraphs, using competent, qualified professional officers, more to to screen people, to find people innocent, if you will, than to try to provide that someone has committed a crime.

The **Chairman**. Senator, your time is up.

The distinguished Senator from Massachusetts.

Senator KENNEDY. I want to focus, Mr. Meese, on your commitment to equal access to justice for all Americans, rich and poor, and the extent that the American people will be able to rely on you to uphold the laws, which are fashioned and shaped, in many instances, to protect the most vulnerable people in our society, as well as to protect minorities, the elderly, the aged, and women in our society. And I am going to just direct your attention to some specific areas.

In earlier questioning by the Senator from Maryland, Mr. Mathias, there was a discussion about attorneys' fees. I am not interested in trying to establish what those figures ought to be in terms of attorneys' fees, but I am interested in establishing a principle.

We know at the present time that governmental agencies and individuals are able to recover attorneys' fees, far in excess of what has been requested by this administration last year, in legislation submitted to this committee—S. 2802—introduced by the Senator from Utah, Mr. Hatch, which was to limit individual recoveries to some $75 an hour. It was suggested at that time that there was a proliferation of individuals who had successfully sued the Government, had been found wronged by the Government and who wanted to be able recover their attorneys' fees. So the administration supported a limitation of $75 an hour. Now, whether it is $75 an hour, or $100 hour, or something more, I would be interested in your position, whether you feel that there ought to be equity on this issue between what an individual would be able to receive if they have a successful case against the Government, and whether an individual who is within the Government would be able to be reimbursed, or whether there should be a disparity as exists at the present time.

What is your reaction to the disparity which exists at the present time?

Mr. MEESE. Well, Senator, I do not believe there is a disparity at the present time, because there is no limit of $75 an hour, or for that matter, any limit. Indeed, the recent surveys have shown that lawyers' fees paid by the Government have ranged from somewhere below $75 to much larger figures.

But my view would be that there should be a balance, and that indeed had the $75 limitation been in existence——

Senator KENNEDY. Well, did you support that?

Mr. MEESE. I did support it, yes.

Senator KENNEDY. All right.

Mr. Meese. I supported the administration position. And indeed, had that been in effect at the time I retained my lawyers, I would have felt obliged, and they would have felt obliged, to be retained at that figure. Because that was not the law at that time, they felt obliged to charge me at prevailing rates so that there would be no hint or suggestion of special treatment for me, and as a result, they charged prevailing rates. But at the same time they have agreed, as I think I mentioned to you, that they will take whatever the court awards in this particular case.

Senator KENNEDY. Well, if I understand you correctly then, whatever limitation is going to be placed upon the hourly reimbursement figure for reimbursement for the individuals or for Government agencies—and they have reached the figure of some $25 million, according to my figures, some $50 million over a 2-year period, according to the National Journal; where the attorneys' fees that the U.S. Government paid to citizens who sued the Government averaged $1.2 million a year between 1981 and 1983—so what has happened quite clearly is, whether by accident or intent, there is a wide disparity between the access of the types of attorneys for individuals to go out and protect their interests versus the individuals in the Government who are protecting their interests. And on the issue, again of equity and fairness, do I understand that whatever dollar figure the administration comes up with, that that will be what all of the agencies of the Government will reimburse, and all the individuals who are in the Government will reimburse, should they request the attorneys' fees—and that is your position?

Mr. MEESE. That would be my position, Senator, yes, sir.

Senator KENNEDY. On a different issue, on the issue of the Legal Services Program, you have stated in our previous exchanges your opposition to the Legal Services Program——

Mr. MEESE. No, sir, that is not true.

Senator KENNEDY [continuing]. The Legal Services law at the present time. You have indicated that you supported a different kind of a program, a voluntary program by the attorneys in various law firms. I am interested in directing your attention to the fact that, as I understand, you have supported the administration's position of zero funding for the Legal Services Corporation over the period of the past years. Is that true?

Mr. MEESE. I have supported the zero funding for the Legal Services Corporation, but have always supported administration funding for legal services programs generally, using a different system.

Senator KENNEDY. Well, which system do you support?

Mr. MEESE. Well, I think the problem with the Legal Services Corporation, if I may preface it by saying that, is that the Legal Services Corporation has formerly, particularly, restricted it's use of funds to the least economical, least effective way of providing legal services to the poor.

Senator Hatch, for example, held hearings and developed all kinds of examples of corruption and misuse of funds through the Legal Services Corporation process.

The system which I would prefer, and which I believe is the best, would be to have block grants to States or to State bar associations where they have integrated bar associations, so this could be used as seed money to involve large groups of private lawyers of all levels of experience in the Legal Services program. I have a long speech that I will not give here, but basically——

Senator KENNEDY. I hope not—on your time.

Mr. MEESE [continuing]. It amounts to providing legal assistance by lawyers in private practice, utilizing third-year law students and lawyers in their first couple of years of practice, so that there can be literally sufficient resources to provide legal services to every poor person who needs it.

I have presented this program, incidentally, to the American Association of Law Schools just about a month ago, and the American Trial Lawyers Association plans to take this up as a major project, I understand, or at least to explore it in the near future.

Senator KENNEDY. Well, first of all, with regard to the block grant programs, which are going to be reduced under the administration's proposals, do you know of any Governors that have indicated support for this type of a proposal?

Mr. MEESE. Yes; I do know Governors who support it; Governor Bond, for example, in Missouri; other Governors, Governor——

Senator KENNEDY. No—who supports paying for legal services out of block grants, substituting the block grant funding for the current legal service funding.

Mr. MEESE. Yes; I believe those Governors would support it. But I am also thinking that perhaps the block grants should be made directly to State bar associations as well.

Senator KENNEDY. Do you know of any of the client groups, those that are representing the various individuals and groups in the legal services program, who support this particular alternative?

Mr. MEESE. Yes; I believe the Legal Services Program in San Diego, which is trying a variation of this based on a Law Day speech I made there a few years ago. I am sure there are others that I am not directly familiar with. I have received quite a bit of mail from people who have indicated their interest in this program.

Senator KENNEDY. Well, as I understand, both the California State Bar Association does not; the Sacramento State Bar Association does not; the Los Angeles Bar Association does not, and the various client groups—I will ask consent that they be listed—do not.

The CHAIRMAN. Without objection, so ordered.

Senator KENNEDY. And I am just wondering, given the problem facing many needy people in our society, how we should interpret the fact that the American Bar Association principal bar associations do not feel that this would provide the kind of adequate representation for needy people——

Mr. MEESE. On the contrary, Senator. I have talked with the past president of the American Bar Association and the current president of the American Bar Association, and they both feel it would be far superior to what we are doing at the present time.

As to the bar associations that you made reference to, I do not know that this idea has ever been presented to either the California or the Sacramento County Bar, but I do know that in those audiences where I presented this plan, such as in San Diego, the county bar there took it up with alacrity, and now has a going program. And as I mentioned, several of the law school deans that I spoke to thought it was a very good idea.

Senator KENNEDY. Well, I will put it in the record, Mr. Meese—if you have other information—their positions in opposition to the private bar being the source for resolving the issue of legal services, and I will put in the record the ABA position on it and the other bar associations I have just referenced.

[The following was received for the record:]

American Bar Association Documents Supporting Legal Services

1. Letter from Morris Harrell, ABA president, to Honorable Howard Baker, dated December 8, 1982:

"The American Bar Association has strongly supported the Legal Services Corporation since its inception. We continue to believe that a strong federal commitment to legal services for the poor, assisted by the voluntary contributions of the private bar, is a crucial component of the American system of justice. The joint efforts of the private bar and federally funded legal services attorneys are needed to ensure that meaningful access to the legal system will be available for all our people."

2. New York Times, August 5, 1980, "New President for Bar Group, William Reece Smith, Jr.":

"He (Smith) hopes to concentrate on two areas: long-range planning within the organization and improved delivery of legal services to the poor. Mr. Smith said that Federal programs had fallen short of meeting the legal needs of poor people. 'The profession itself still has a major responsibility,' he said."

3. William Reece Smith, president ABA, speaking before the National Legal Aid and Defender Association, November 19, 1980:

"The ABA doesn't provide me with a crystal ball, so I don't know what's going to happen. But I do know that the Legal Services Corporation has proved its value. I do know that it is the heart of any effective delivery system of legal services to the poor that we develop in this country. And I do know that it must remain intact, regardless of the role that the private bar plays in the delivery of legal services.

"...The private bar can supplement -- I stress that the purpose is to supplement -- the work of the Legal Services Corporation. What we seek to do is to stimulate more private bar involvement on a voluntary basis for for the purpose of serving those 20 million people that we all know have legal needs that remain unmet despite all the fine work that is done by the Corporation."

4. William Reece Smith, president ABA, speaking to the National Conference of Bar Presidents, 1981:

"We simply did not get the job done (private bar efforts to serve the poor) in this country on a voluntary basis."

5. Statement of David R. Brink, president of the ABA, in response to President Reagan's Budget Message, February 8, 1982:

"The Administration suggests this year that lawyers can take over the responsibility themselves (providing legal services to poor). This is almost like asking grocers to pay the entire cost of feeding the nation's hungry....The American Bar Association has been a leader in encouraging both unpaid service by lawyers and in supporting public funding of legal services to indigent persons.

"But equal access to justice is a national goal and a public responsibility. With all our best efforts, private lawyers cannot meet that goal alone any more than physicians alone can meet the goal of providing health care to the poor or educators the goal of providing public education. The national goal of equal justice, like the goals of public health and public education, must be publicly supported. Lawyers can and do design plans for local delivery of services to the poor and can and do contribute unpaid services to support those plans, but it is unrealistic for the government to transfer its responsibility to serve a public need to any one group in our society.

"The Legal Services Corporation provides only the means; its programs are locally devised and locally administered by local lawyers, in substantial part depending on private bar involvement in delivering the services. At present, the Legal Services Corporation is prevented by law from engaging in any types of legal activity that some occasionally found objectionable in the past. It is the greatest single source for providing necessary, everyday legal services to a large segment of Americans. The Administration's proposal to end the Legal Services Corporation should be opposed by an aroused citizenry and be defeated by Congress, just as it was last year."

6. David Brink, ABA president, testifying before the Senate Appropriations Subcommittee on State, Justice, Commerce, the Judiciary and Related Agencies, April 28, 1982:

"Our profession, more than any other group in our society, has a long tradition of rendering unpaid volunteer services. In the ABA, we are spending much of our own money to fill the void that already exists and to stimulate additional pro bono services....Yet, with all efforts by lawyers, it is clear that volunteers cannot provide all that is needed in training, intake, quality control and case supervision. We cannot do it all any more than physicians can pay all medical costs of the poor or grocers pay the costs of feeding all the hungry."

7. William Reece Smith, ABA president, testifying before Subcommittee on Courts, Civil Libertieis and the Administration of Justice, U.S. House of Representatives, March 31, 1981:

" We are here today to voice the American Bar Association's strong support for the Legal Services Corporation and our opposition to its elimination.

But we are here for something far more important: the principle of equal justice under law. For that very principle, one of the most fundamental of our democratic system of government, is being threatened.

As a nation, we pride ourselves that we have the best system of justice in the world, one in which every person, rich or poor, will be treated fairly. I believe that we have the oldest surviving democracy in the world because our people perceive that they can settle their grievances and enforce their rights through the justice system.

But if our system does not work for a substantial segment of our society - if the justice system works for the rich but not for the poor - then we are not "ensuring justice," and we cannot expect our citizenry to respect the law and the legal system. And without that respect, that faith in our system, our entire American way of life becomes fragile and endangered.

The Administrationrecently recommended that funding of the Legal Services Corporation be terminated. Those who made the recommendation deny it is tantamount to depriving the poor of legal assistance. They assert that state governments and the private bar can effectively meet the need. We disagree. Moreover, we believe the recommendation would be detrimental not only to the poor but also to all citizens who cherish our nation's promise of equal justice under law.

It is unrealistic to expect state governments to provide an effective system to meet the legal needs of the nation's poor persons. Historically the states have not accepted civil legal services as a state responsiblity. Only about 1% of the funding for such services for the poor is being provided by the states. There is no indication that the states are willing or able to assume greater responsiblity in the area.

It has also been suggested that the legal needs of the poor could be met by pro bono contributions by the private bar. Those who make the suggestion seem to be unaware of the large volume of pro bono work being performed already by the private bar. Lawyers in this country have long sought to meet the legal needs of those unable to pay. They have done this individually and collectively. The first formal legal services program was established by lawyers in New York in 1876. The ABA's involvement began in 1920, when Charles Evans Hughes, later Chief Justice of the United States, became the first chairman of the Committee on Legal Aid - the committee which Mr. Shestack now chairs.

From 1920 to the present day, our Committee on Legal Aid and our Association as a whole have sought to foster the growth of pro bono efforts by the private bar. But by the mid-60's, it had become apparent to everyone that this voluntary effort to provide the poor access to our justice system, while significant, was meeting and could meet only a small percentage of the legal needs of the poor. Under the leadership of Lewis Powell, our then President, the Association's House of Delegates in 1965 unanimously endorsed a resolution pledging the Association's cooperation with the Office of Economic Opportunity in establishing a federally-funded program of legal services for the poor."

8. Remarks of William W. Falsgraf, President-Elect, ABA, before the National Legal Aid and Defender Association, December 4, 1984:

> "...The position of the American Bar Association has not changed. Our support for federally funded legal services continues undiminished. And I want you to know that my personal support is equally strong.
>
> "New questions are now emerging about how legal services can best be delivered to the poor. There is no one magical answer to those questions. But the ABA House of Delegates, our policy-making body, has adopted three resolutions that guide our support of federally funded legal services. Those resolutions continue to embody the ABA's policy.
>
> "First, we support federally funded legal services administered through a policicitically independent national corporation."

9. Letter from David R. Brink, President of ABA, to membership, March 15, 1982:

"In its budget message, the Administration has suggested that the burden of providing all civil legal services to the poor should rest on the shoulders of the private bar. We disagree. While we have been actively promoting increased participation in the delivery of legal services to the poor by the private bar, we realize that lawyers alone will not be able to meet more than a small portion of the need. Equal access to justice is a national goal and a national responsibility which should be provided by the public. We must continue our support for the federally-funded program."

10. Press conference statement of William Reece Smith, Jr., President of American Bar Association, March 10, 1981:

It has been over 100 years since the first program was established to provide legal services to the disadvantaged. Since then the private bar and other concerned citizens have, through voluntary contributions, tried to ensure access for this unrepresented segment of our society. But despite these substantial efforts, it soon became evident that only a small portion of the civil legal needs of the poor could ever be met by this voluntary approach. Without a federal program, the doors of justice remained shut to millions of our nation's neediest citizens.

In addition, the voluntary efforts of the private bar have continued and increased. And these efforts together with those of the Corporation have for the first time brought this nation close to making a reality of the promise of equal justice for all our citizens. In this way, the Corporation has been a unique and remarkable example of government and the private sector working together to solve society's problems.

11. Letter from Wallace D. Riley, ABA President, to Robert E. McCarthy, Esq., Chairman of the Board of Legal Services Corporation, January 5, 1984:

"It has long been the established policy of the Association to support adequate funding for the Legal Services Corporation."

12. Letter from F. William McCalpin, Chairman of Standing Committee on Legal Aid and Indigent Defendants, ABA, to Senator Howard Baker, October 4, 1983:

    "The private bar, with the essential core support provided by the programs, is now handling about 10% of the total caseload; but even this strong private effort cannot begin to address the unmet legal needs of the poor."

13. John Shepard, President-Elect of the ABA, speaking before the 61st Annual Conference of the National Legal Aid and Defender Association in Philadelphia, Pennsylvania, September 20, 1983:

    "Our participation in and support for your goals...is not a marriage of convenience; it is a marriage of necessity. And the necessity arises not from the organized bar's need or what...staff attorneys need, but from what the American people need..."

14. William Reese Smith, Jr., former President of the ABA, and current Chairman of the ABA's Consortium on Legal Services and the Public, speaking at the ABA's Pro Bono Conference in Anaheim, California, January 19, 1984:

    "In sum, 25 years of experience teach that the most efficient and effective way to serve the legal needs of America's poor is to maintain a strong national network of federally funded offices, adequately staffed with full-time professional poverty lawyers, and to enhance their work with coordinated pro bono services of the private bar.

    "In reality, we will always need pro bono programs to supplement federally funded services. Thus, those programs must be sustained, not jeopardized."

15. ABA President Wallace D. Riley speaking at the ABA's Pro Bono Conference in Anaheim, California, January 19, 1984:

    "...we (must) continue our effort to assure adequate funding for legal services programs.

    "It was precisely the realization in the 1960s that the private bar cannot do this job alone that led to our support for publicly funded legal serv ices. And the ABA continues to support this concept.

    "But even as we support public funding, we have an obligation to carry our share of the burden. We know that pro bono programs are vital to meeting the needs of the poor for legal services because, even at the highest level of funding for the Legal Services Corporation, there was still a great unmet demand for service."

CALIFORNIA BAR ASSOCIATIONS SUPPORTING LEGAL SERVICES

1. Statement of Board of Trustees, Los Angeles County Bar Association, Adopted March 11, 1981:

We are astonished and appalled at the Administration's decision to seek abolition of the Legal Services Corporation. The provision of legal services to the poor is critical to our system of justice. Without it the poor are locked out of the courthouse. Denied lawyers, they become easy victims for fraud, government neglect, and exploitation. In a nation of laws, those without lawyers don't count.

Finally, we want it understood that the Association does not shirk its responsibility to provide pro bono publico representation to the poor. We are already providing more than $2 million in free legal services annually to the poor of Los Angeles County. But experience has taught us that pro bono programs can only be effective in conjunction with adequately funded legal aid organizations with the independence to vigorously represent the poor. The elimination of that representation would be a tragedy for all Southern Californians.

2. Omnibus Resolution of the Lawyer's Club of San Francisco:

WHEREAS, state and local government funding of all legal services for the poor is neither realistic nor desirable;

WHEREAS, eliminating the Legal Services Corporation would deny a vast number of American citizens equal access to the justice system;

WHEREAS, members of the private bar of San Francisco have provided example and leadership in the provision of pro bono publico legal services to the poor;

WHEREAS, the substantial resources necessary to provide legal services to the poor cannot be accommodated even by the private bar of San Francisco;

WHEREAS, the poor, like all other citizens, need legal services free from restrictive practice provisions and political control.

RESOLVED that:

A. The Lawyers' Club of San Francisco opposes any attempt to withdraw federal funding from the Legal Services Corporation or its grantees, or to dissolve the Corporation.

B. The Lawyers' Club of San Francisco urges reauthorization of the Legal Services Corporation at an increased level of funding, in order to continue to provide high quality legal representation for the poor.

3. Excerpts from resolution of Board of Directors of the Barristers Club of San Francisco, March 9, 1981:

WHEREAS, state and local funding of the LSC functions is not a realistic prospect in the short term.

THEREFORE, be it resolved that the Barristers Board opposes abolishment of the Legal Services Corporation and withdrawal of federal funding.

4. Excerpt from resolution adopted by Board of Directors of the Fresno County Young Lawyers Association, April, 1981:

> WHEREAS, the National Legal Services Corporation spends 97% of the federal monies it receives in the support and delivery of direct services to low income clients; and
>
> WHEREAS, reauthorization and full appropriations for the National Legal Services Corporation is in the best interest of the entire country, as well as the San Joaquin Valley and throughout California.
>
> THEREFORE, BE IT RESOLVED, that the Board of Directors of the Fresno County Young Lawyers Association strongly urges our Congressional and Senatorial representatives to support the full refunding and full reauthorization, without further congressional imposed restrictions, of the National Legal Services Corporation for 1982 and thereafter; and
>
> BE IT FURTHER RESOLVED, that copies of this resolution be sent to our representative urging their full support for the National Legal Services Corporation.

5. Excerpt from Statement and Resolution of Board of Directors of the Orange County Bar Association, March 26, 1981:

Although the pro bono services provided by the Orange County Bar Association have been significant in helping meet the legal needs of the poor, the resources of the Bar Association are insufficient by themselves to satisfy the poor's continuing need for legal services.

The leadership of the Orange County Bar Association is shocked that future funding for the Legal Services Corporation is under consideration for reduction or elimination. Such an action would be unforgivable and would result in denying legal representation to the poor of this county.

Excerpt from
6. Resolution of the Board of Governors of the Women Lawyer's Association of Los Angeles, March, 1981:

3. Whereas there is no evidence that any other resources will materialize to substitute for or replace federal funding of legal assistance for the poor;

4. Whereas government funding for legal services is necessary to guarantee access to justice for poor people;

5. Whereas the Legal Services Corporation has proved to be an economical and effective structure for funding legal assistance to the poor;

The Board of Governors of the Women Lawyers' Association of Los Angeles hereby resolves that the President and Congress of the United States is strongly urged to continue the existence of the Legal Services Corporation, with full funding and no restrictions, and with a new board of directors who will be committed to the effective provision of a full range of legal services to the poor.

7. Excerpt from Resolution adopted by Board of Directors of Southern Alameda County Bar Association, April, 1981:

WHEREAS: the President of the United States has recommended zero funding for the Legal Services Corporation and its dissolution;

WHEREAS: the needs of the poor cannot be met only through pro bono representation by the private bar; and

WHEREAS: without federal funding of the Legal Services Corporation, equal justice would become an empty phrase,

THEREFORE, be it resolved that:

(1) the Southern Alameda County Bar Association strongly opposes elimination of the Legal Services Corporation;

8. Resolution of Santa Cruz County Bar Association, March, 1981:

Whereas the Legal Services Corporation and the programs which it funds serve a vital function in our society, BE IT THEREFORE RESOLVED that the Santa Cruz County Bar Association supports the authorization and appropriations for the Legal Services Corporation at its present level. The President of the Association is directed to communicate the Association's concerns to our legislative representatives and appropriate committees.

9. Statement of Support (for Legal Services Corporation) by the Board of Governors of the Long Beach Bar Association:

Our Association has worked long and hard to see that the poor, the disabled, and the aged in our community are not denied access to justice because of their inability to pay for lawyers. Our local Legal Aid Foundation has been effective in accomplishing that goal. The Foundation, governed by a Board of Directors from our local bar and client community, provides quality legal services to the poor at minimal cost. Without the funding they receive from the Legal Services Corporation, this program will cease to exist.

The human impact of the elimination of the Legal Services Corporation on this community will be heavy.

10. Resolution, Board of Directors, Contra Costa County Bar Association:

The Board of Directors of the Contra Costa County Bar Association upon consideration of the proposed action of the Reagan administration to discontinue funding of the Legal Services Corporation has unanimously resolved to encourage President Reagan to reconsider such action. Such a decision can only have a detrimental effect on that large portion of American people who, but for the existence of the Legal Services Corporation, would have virtually no access to legal representation. Unfortunately, today, Justice through appropriate legal representation often comes only at a significant cost. If the Legal Services Corporation is deleted, some very important protections will be taken from many of our citizens.

11. Excerpt from Resolution of the Fresno County Chapter of California Women Lawyers Association, March, 1981:

WHEREAS, reauthorization and full appropriations for the national Legal Services Corporation is in the best interest of the entire country, as well as the San Joaquin Valley and throughout California.

THEREFORE, BE IT RESOLVED, that the Fresno Chapter of the California Women Lawyers Association strongly urges our Congressional and Senatorial representatives to support the full refunding and full reauthorization, without further restrictions, of the national Legal Services Corporation for 1982 and thereafter; and

ADDITIONAL DOCUMENTS SUPPORTING LEGAL SERVICES CORPORATION

1. Excerpt from letter from Robert F. Baker, president, North Carolina Bar Association, to Congressman Jamie L. Whitten, August 3, 1982:

> "As a private attorney I realize full well my professional obligation to help serve the needs of indigents, and I have donated services in the past and will continue to do so. But it is unrealistic to expect private attorneys to be familiar with legal needs peculiar to poor people such as landlord/tenant and government benefits problems. Therefore, if the private bar is to be effectively involved in serving indigents it is essential that "professional" Legal Services attorneys be available locally to provide training and assistance in specialized areas of poverty law."

2. Excerpt from news release of the State Bar of Wisconsin,

Wisconsin Bar President Lawrence Bugge said that although his association has taken a prominent role in advocating the use of private attorneys in the Corporation's programming, it also has consistently supported federal funding of legal services to the poor.

In January of this year, the Wisconsin Bar's policy-making Board of Governors not only reaffirmed its "unqualified support" for federal funding of legal services for the poor but also went on record as opposing "any amendment to the Legal Services Corporation Act which would impair the ability of legal services attorneys to offer the full range of legal remedies for the poor that are available to more affluent clients from an attorney in private practice."

3. Statement of Harold R. Tyler, Vice President, Bar Association of the City of New York

The demise of federally funded legal aid for the poor arguably would not be ill-advised were it clear that substitute resources of efficiency and reasonable cost were at hand. But there is simply no assurance that state and local governments -- many of which are undertaking the same kind of belt-tightening as the President has commanded for the federal government -- will see fit to appropriate funds for civil legal services.

Moreover, resort to local funding raises the spectre of widely variant capabilities in legal aid as between one jurisdiction and the next -- an arbitrary form of inequality only slightly less cruel than denying assistance altogether. Nor is there any assurance that local programs will be funded in the politically independent manner that is now guaranteed by the Legal Services Corporation Act. Since legal services lawyers often represent clients in disputes with state and local governmental entities, the political pressures against most local programs' integrity and effectiveness will be obvious and debilitating.

The private bar cannot be expected to fill the enormous void that would follow the demise of the Corporation. To be sure, many individual attorneys, firms and bar associations have given unflinchingly of their time in non-compensated public service, and will continue to do so. Yet the very premise of the Corporation, and of federal funding for civil legal services, is that there has remained a pressing, unsatisfied need for legal service to the poor.

4. Letter from Jerry K. Levy, president, Kansas Trial Lawyers Association, to Robert Evans, American Bar Association, March 6, 1981.

> I read with deep concern accounts in the paper today regarding the Reagan Administration's proposal to defund the Legal Services Corporation, or, in the alternative, to place funding for this noble program in block grants administered by the various states. I have watched Legal Services in Kansas grow through the local grantee, Kansas Legal Services, Inc., for many years. I view this program as being highly successful in that it has developed quality legal services for all poor persons throughout the entire State of Kansas in a very short time, and delivers those services in a highly professional manner to over 12,000 individuals annually. Without the existence of this program, the private bar would have to assume those services on their own. This would not be economically feasible and would not be in the best interests of the low-income citizens of Kansas.

5. News Release of the Colorado Bar Association, March 12, 1981:

"If it (LSC) is abolished, the private bar in this state will be unable to take over more than a small fraction of the additional load. Many poor people with need to pursue their rights and interests under the law will simply not be able to do so.

"Whatever cuts in the program may prove necessary, we hope Congress will continue to fund legal assistance to the poor through the Legal Services Corporation."

6. Testimony of F. Wm. McCalpin, Chairman, Board of Directors, Legal Services Corporation and Secretary, American Bar Association, before the U.S. House of Representative's Subcommittee on Courts, Civil Liberties and the Administration of Justice, March 17, 1981:

IV. INVOLVEMENT OF THE PRIVATE BAR

The President and others have suggested that public support of legal services can be replaced by the voluntary efforts of the private bar. Nothing could be further from the truth. Any one who thinks this can happen misunderstands the nature of poverty law, the extent of the legal needs of the poor, and the limits of *pro bono* work. In cooperation with the American Bar Association, the Corporation has started a major *pro bono* effort. No matter how successful we are in that campaign, equal access for the poor will never happen if they have to rely totally on the volunteer time of private attorneys.

From the very beginning, private attorneys individually and through the organized bar have been full partners in the legal services movement. One of the major stimuli to increased *pro bono* activity has been the presence of organized full-time legal services offices. It is the presence of legal services that provides the framework and the backup for effective voluntary contributions. Working together in communities in every part of the country, poverty lawyers and private attorneys have combined their particular resources and abilities to most effectively meet the needs of low-income clients.

Every attorney has a professional obligation to engage in significant *pro bono* work. There are practical limits, however, on what we can realistically expect them to do.

There are resource limitations. Except for attorneys practicing in very large law firms that subsidize *pro bono* work, voluntary efforts must be limited to matters that can be handled with relatively small investments of an attorney's time. Many legal problems of poor people require a time commitment from an attorney that those in private practice cannot make.

There are limitations in expertise. Some legal problems of the poor fall easily within the expertise of attorneys in general practice -- simple wills, divorces for example. Many others, however, require substantial specialization -- expertise in complex areas of the law that are beyond the practice of most private attorneys. The highest paid tax attorney in the country could not easily wind his way through the Social Security Act and the mass of regulations to effectively represent poor clients.

Finally, there are the potentials for conflict of interest that raise serious limitations, particularly in small communities. Attorneys who represent commercial interests, local governments, or employers cannot also provide representation to poor people who have legal disuptes with those individuals or institutions.

Pro bono work must continue and expand, but as a partnership with a publicly funded legal services program. Effective access to the legal system for the poor will never occur if this country relies exclusively on one or the other.

7. Statement of Bruce Babbitt, Governor of the State of Arizona, March 18, 1981:

> "Legal Services must be provided free from political influence. The best way to insulate Legal Services from local political pressures is to continue the current funding scheme -- that of funding local programs through an independent, federally-funded organization. Legal services should not be made a part of any multipurpose block grant for social serv ices."

8. Resolution adopted by Supreme Court of Massachusetts:

> "The Justices also believe that legal services should not be joined, for funding purposes, with other social services programs. To do so would undercut the ability of legal services programs. To do so would undercut the ability of legal services lawyers to render professional services to their clients independently of political and other pressures. The Justices strongly oppose any attempt to retreat from the principles of full and unencumbered representation of the poor."

9. Statement of the Coalition of New York City Judges in Support of the Legal Services Corporation, March 12, 1981:

Because of our unique responsibility to ensure that justice is administered equally and fairly, we as Judges have a stake in Congressional reauthorization of an adequately funded Legal Services Corporation. Both the orderly administration of justice, and the fairness of the outcome in individual cases, are generally dependent upon adequate representation. The programs funded by the Legal Services Corporation have provided much of this needed representation in New York City for the past thirteen years. In addition, thousands of needy people who have nowhere else to turn for advice and counsel prior to litigation in civil claims rely upon the services provided by the legal services programs funded by the Legal Services Corporation.

The President's proposal to eliminate all funding for an independent Legal Services Corporation is particularly abhorrent to us as members of the judiciary. We likewise oppose any reduction in the program's funding or a move to discretionary funding by the states. Accordingly, we urge continued authorization of the Legal Services Corporation at levels necessary to provide the services needed.

Document #10

ARTHUR J. ENGLAND, JR.
JUSTICE
SUPREME COURT

STATE OF FLORIDA
TALLAHASSEE 32304

March 17, 1981

Dear Congressman:

I am advised that the Office of Management and Budget has proposed a complete elimination of funding for the Legal Services Corporation. That organization, as you know, provides civil representation for indigents throughout the country. Current activities of the Legal Services Corporation and its state grantees, I understand, involve from one to three million open civil cases in which publicly-funded law services are being provided to indigents.

Funding from the Legal Services Corporation to Florida grantees has made legal services potentially available to an estimated 1.7 million targeted Florida residents--persons otherwise unable to obtain legal help--and has resulted in active representation in many thousands of pending cases.

I request that you consider carefully the adverse consequences of terminating activities of the Legal Services Corporation, as proposed by OMB. Whatever the federal government's long range commitment to the poor, I urge you not to allow an abrupt termination of the civil representation of indigents by federally-funded attorneys.

Sincerely yours,

Arthur J England Jr

AJEJr/mac

cc: President, Legal Services Corp.

President, Florida Legal Services, Inc.

IN THE

Congreſs of the United States

IN RE THE LEGAL
SERVICES CORPORATION

BRIEF IN SUPPORT OF THE REAUTHORIZATION AND CONTINUED FUNDING OF THE LEGAL SERVICES CORPORATION

NEW YORK LAWYERS' COMMITTEE
TO PRESERVE LEGAL SERVICES
36 West 44th Street, Suite 1201
New York, New York 10036

appointed lawyer as a matter of constitutional right in all civil cases, the expense would far exceed the present resources of the LSC and all other legal aid delivery systems combined.

4. *Public Funding of Lawyers for the Wealthy: Tax Deductions.*

The concept of all taxpayers funding legal services for some taxpayers is hardly novel. The richest corporations in the country, and the wealthiest citizens, deduct billions of dollars in legal fees from their income tax returns. Such deductions mean a loss of tax revenues for the government and therefore represent just as real a cost to taxpayers as do expenditures of money from the treasury. At the higher brackets, the deductions mean that other taxpayers are footing 50% or more of the bill for these high-priced legal services.[131] The cost to the public of the deductions – about $12 *billion* for corporations alone in 1978[132] – dwarfs the comparatively tiny $321 *million* budget of the LSC. Surely there is room for this extremely modest public funding of legal services for the poor in a system which tolerates, without even any serious debate, the loss of billions in tax revenues to finance legal services for the wealthy.

5. Pro Bono *Services Alone Cannot Come Close to Meeting the Need.*

Some of those purporting to recognize the importance of legal services for the poor, but opposed to the LSC, advance the notion that the private bar should and can provide such services *pro bono publico* ("for the good of the public").[133] The simple fact, however, is that *pro bono* services satisfy at present, and are likely to satisfy in the future, only a small and haphazardly selected portion of the legal needs of the poor. Indeed, it was the inadequacy of private legal aid programs and *pro bono* activities by individual attorneys that led to the establishment of federally funded legal services in the first place (*see* pp. 5-6 *supra* and note 145 *infra*).

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[131] Under sections 162 and 212 of the Internal Revenue Code of 1954, as amended (the "Code"), legal fees, other than those which are incurred for personal reasons or have to be capitalized, are generally deductible by the taxpayer in computing taxable income. For corporations in the highest tax bracket (all corporations with taxable income exceeding $100,000), almost half of the corporation's deductible legal fees are in effect paid by the government. For individuals in the highest tax bracket, the government subsidy for deductible legal fees is 70% of the fee.

Legal fees incurred in connection with a taxpayer's trade or business are generally deductible under section 162 of the Code and these fees may be deducted regardless of whether the taxpayer itemizes deductions. In addition, some legal expenses incurred in connection with the production of income, but not incurred in connection with a trade or business, are deductible under section 212(1) or (2) of the Code by individuals who itemize their deductions.

Some examples of deductible legal fees include:

1. Fees incurred by a corporation in defending and settling a tort claim arising out of the negligent use of a company-owned car, *Kopp's Company, Inc. v. United States*, 80-2 U.S.T.C. ¶ 9747 (4th Cir. 1980);

2. Fees incurred by a corporation named as a defendant in a divorce proceeding between a shareholder and his wife, *Dolese v. United States*, 605 F.2d 1146 (10th Cir. 1979), *cert. denied*, 445 U.S. 961 (1980);

3. Fees incurred by an underwriter in the unsuccessful defense of a criminal prosecution for fraud under the securities laws, *Comm'r v. Tellier*, 383 U.S. 687 (1966);

4. Fees incurred by a taxpayer in defending criminal prosecution for tax fraud, even if convicted, Rev. Rul. 68-662, 1968-2 C.B. 69;

5. Fees incurred in applying for a federal income tax ruling, Rev. Rul. 67-401, 1967-2 C.B. 123; *Kaufmann v. United States*, 227 F. Supp. 807 (D. Mo. 1963).

[132] Corporations deducted $24 billion for legal expenses in 1978. *President Carter's Attack and The Response*, *supra* note 119. *See also* P. Stern, *Lawyers on Trial* 7-8 (1980).

[133] On the concept of *pro bono* services, *see generally* F. Marks, K. Leswing & B. Fortinsky, *The Lawyer, The Public and Professional Responsibility* (Am. Bar Found. 1972).

The concept that all lawyers should recognize an affirmative, mandatory duty to render *pro bono* services emerged only in the 1970's.[134] The mandatory *pro bono* proposals have defined "*pro bono*" services variously, but customarily the definition includes not only legal services for the indigent, but also such pursuits as representation of charitable corporations and service on bar association committees designed to improve the administration of law.[135]

The mandatory *pro bono* concept has thus far not been accepted by most members of the private bar.[136] Indeed, the most recent mandatory *pro bono* proposal, put forward by the ABA Commission on Evaluation of Professional Standards, has now been withdrawn because of strong opposition to the proposal by lawyers throughout the country.[137]

The amount of voluntary *pro bono* services rendered has fluctuated over the years. After the initial spurt of activity in the 1960's, interest in *pro bono* service seemed to wane in the mid-1970's.[138] In more recent years, the trend has been modestly upward, although the degree of increase is very difficult to measure.[139] There is plainly a wide divergence in the degree of *pro bono* involvement of lawyers. One 1978 survey of 600 attorneys indicated that fully 37% of the respondents had not rendered any *pro bono* services whatsoever.[140]

Even assuming a continued growth in *pro bono* services by members of the private bar, such services can never be relied upon to meet more than a small fraction of the legal needs of the poor. Many lawyers evince little interest in representing, and many cannot afford to represent, the poor *gratis*. In any event there is a basic illogic and unfairness in requiring lawyers personally to bear the entire financial burden of meeting a vital need serving the interests of all taxpayers. Owners of grocery stores are not required to provide free food to the poor, landlords are not required to provide free housing, and members of other licensed professions – from plumbers to physicians – are not required to provide free services.

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[134] A narrower, passive tradition that lawyers should not decline to render services to those who approach them and are unable to pay is of considerable vintage but has never resulted in more than a modest amount of *pro bono* service, it being a matter of pure "happenstance" from which few members of the poor benefited. B. Christensen, *The Lawyer's Pro Bono Publico Responsibility*, 1 Am. Bar Found. Research J. 1, 7-8 (1981).

[135] *See* Special Committee on the Lawyer's *Pro Bono* Obligations, Ass'n of the Bar of the City of New York, *Toward a Mandatory Contribution of Public Service Practice by Every Lawyer*, at 12 (1980) (*pro bono* services include "activities of any nature designed to carry out or improve the administration of justice"). *See also* note 137 *infra*.

[136] Fully 88% of 600 lawyers polled in a random telephone survey voiced opposition to the concept of mandatory *pro bono* services. *Lawpoll – Public Interest Legal Services: Perceptions and Preferences*, 64 A.B.A.J. 1494 (1978) [hereinafter cited as "Lawpoll"].

Earlier this year the Washington, D.C. Bar held a referendum in which the members voted 6,721 to 5,189 to prohibit the bar from using dues money for public service activities, including referral services for the poor. A. Kamen & B. Weiser, *Lawyers at Odds Over Public Service Role*, Washington Post, Feb. 24, 1981, at B1, col. 1.

[137] The Discussion Draft of the Commission's proposal, part of a general revision of the present ABA Model Code of Professional Responsibility, provided that, "A lawyer shall render unpaid public interest legal service" and "shall make an annual report concerning such service to appropriate regulatory authorities." ABA Commission on Evaluation of Professional Standards, *Model Rules of Professional Conduct* – Discussion Draft, January 30, 1980, Rule 8.1 at 118. The Working Draft, prepared after receiving comments on the Discussion Draft, provides: "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, or by service in activities for improving the law, the legal system, or the legal profession." Working Draft, March 21, 1981, Rule 6.1 at 224. Thus, the public service provision is now exhortatory rather than mandatory and may be fulfilled by providing legal services at reduced rates rather than at no cost.

[138] *See* Council for Public Interest Law, *Balancing the Scales of Justice: Financing Public Interest Law in America*, at 300-05 (1976).

[139] *See generally*, B. Christensen, *supra* note 134, 1 Am. Bar Found. Research J. at 8-9.

[140] *Lawpoll*, *supra* note 136, at 1495.

These questions aside, there are important advantages to a publicly funded legal services program over a primarily *pro bono* system with respect to the quality of the services rendered. First is the matter of expertise. Poverty law can be complex; welfare rights, employment discrimination, and the like are specialties requiring as much in-depth and topical knowledge as do corporate law specialties. Inevitably, some *pro bono* services rendered to the poor by many lawyers will have about them an aura of dilletantism. These services are far better than nothing but seldom compare favorably with those of the experienced poverty law specialists on the staffs of LSC-funded programs.

The quality gap will be increased by the greater dedication usually to be found in a legal services attorney who has chosen to enter a poverty law practice, when compared with a private attorney who has either been conscripted into rendering *pro bono* services or does so out of a sense of ethical duty.[141] The bulk of a poverty law caseload, however serviced, consists of fairly routine and repetitious problems, important to individual clients, but often not very stimulating for the lawyer. A steady diet of eviction notices, divorce proceedings, and consumer loan problems can hold the attention of most lawyers for only a limited period of time, unless they have a strong degree of dedication, idealism, and empathy with the poor – *i.e.*, the very qualities that lead some lawyers to pursue a poverty law speciality at the much lower salaries available in legal services offices as distinguished from private practice.[142] Many private attorneys have found that recognition of an ethical duty to render *pro bono* services is not sufficient to sustain a commitment to handle routine legal service matters for the poor for very long.

Finally, a predominantly *pro bono* system would effectively lead to the selection and service of clients by chance. There would be great differences in the quantity and quality of services available from one locality to another, for it is to be expected that bar associations and lawyers will vary widely in their receptiveness to the concept of representing the poor and in their willingness to impose upon themselves the organizational regimentation necessary to achieve a coordinated delivery system. It is a plain fact that the number of local *pro bono* programs operating today with any palpable impact on the legal needs of the poor is but a handful.

A legal services delivery system depending primarily upon *pro bono* services would thus be much less efficient, and much less effective for the poor, than a publicly funded system which permits the development of experienced specialists dedicated to poverty law. The poor, like all clients, need zealous advocacy by attorneys committed to their cause, not the halting and inexperienced efforts likely to typify a *pro bono* system.

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[141] *See* Council for Public Interest Law, *supra* note 138, at 289-96.

[142] It is the height of irony for legal services attorneys, fueled by this sense of personal commitment, to be criticized – as they are by some opponents of the LSC – for displaying precisely the zealous dedication on behalf of their clients which is the ethical obligation of all attorneys and which paying clients expect from their lawyers.

6. *The LSC Encourages* Pro Bono *Representation.*

We do not demean the value of *pro bono* services as a supplement to a government funded legal services program, however. Indeed, one factor favoring retention of the LSC is that the program, and the national commitment to legal services that it dramatically embodies, have been a spur to the rendition of *pro bono* services by the private bar.[143] The LSC has sponsored a variety of programs that have succeeded in stimulating greater *pro bono* activity – an added dividend for the poor from the modest LSC budget.[144]

By the same token, the elimination of the LSC would, in our judgment, have the effect of dampening the private bar's commitment to *pro bono* services. Such a step would be seen, and not incorrectly, as a national decision that legal services for the poor are not all that important, or merely reflect "liberal" political tenets no longer in vogue. If the taxpayers and their elected representatives belittle the importance of providing legal services for the poor, it would be difficult for lawyers to view themselves as duty bound to contribute their own time and services toward this goal. To be sure, many would continue to contribute; but any expectation that the elimination of the LSC would encourage lawyers to render increased *pro bono* services and thus to "take up the slack" is wholly unrealistic.[145]

C. Government Funding of Legal Services Must and Should Come Primarily and Directly from the Federal Government.

For several reasons it is the federal government which must primarily fund legal services for the poor.

There has been little interest at the state or local government level in providing legal services. Virtually no such interest was demonstrated before the federal funding effort started in 1965 and very little has been forthcoming since that time to supplement the federal program.[146]

1. *Budgetary Considerations.*

The federal government, whatever its budgetary problems, possesses a much greater financial ability to fund legal services than do most state and local governments. In the words of a strong LSC *opponent*, the LSC comprises only a "minuscule" portion of the federal

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[143] In calendar year 1980, the Legal Services Corporation approved $500,000 to initiate *pro bono* programs. This money was granted to local programs on a matching funds basis with grants from other sources. *Legal Services Corporation News*, July-August 1980, at 4, col. 1.

[144] *See* pp. 17-18 *supra*. In New York, for example, the Legal Services Support Project, funded by the LSC, solicits private law firms to advise legal services attorneys in areas of the law not normally encountered by legal services attorneys, and to make available their support systems to aid legal services offices. *See also*, *Pro Bono that Works*, NLADA Briefcase 54 (September 1980) (interview with director of the Volunteer Lawyers Project of the Boston Bar Association); Legal Services Corporation, *Volunteer Lawyers for the Poor: A Guide to Model Programs* (April 1980).

[145] "But, the private bar efforts are needed *in combination with* the efforts of the Corporation, each encouraging the other, if we are to address meaningfully the legal problems of the poor. To eliminate the federal role in joint endeavors between government and the private sector would have a devastating effect. It would carry us back to the situation that existed prior to 1965, the year the first federal legal services program was created, in which, despite the efforts of the private bar, the great bulk of the legal needs of the poor were unmet." Statement of Jerome J. Shestack, Chairman of the ABA's Standing Committee on Legal Aid and Indigent Defendants, before the Subcommittee on State, Justice, Commerce and the Judiciary, Senate Appropriations Committee, at 8 (Apr. 22, 1981).

[146] Currently, state and local governments contribute only $5,309,000 to legal services programs, a sum equivalent to 1.65% of the LSC budget. *Field Program Characteristics*, *supra* note 69, at 18.

JUDICIARY COMMITTEE
1985 FEB -6 PM 4:31

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1985 FEB -6 AM 11:03

February 4, 1985

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We understand that during questioning of Attorney General Designee Edwin Meese, III by Senator Kennedy during Mr. Meese's confirmation hearings on Tuesday, January 29, reference was made to the views of the American Bar Association on the subject of the Legal Services Corporation. To clarify any confusion which may exist about this issue, we are writing to reiterate our views.

The American Bar Association has consistently supported the federal legal services program since 1965 when, under the leadership of our then President, now Justice Lewis F. Powell, Jr., our House of Delegates unanimously called for the creation of a federal program. We did so out of a realization that the voluntary efforts of the private bar, as substantial as they were, to meet the legal needs of the poor were falling short of the mark. Our support for the need for a strong federal component of the overall plan to address the legal needs of the poor has continued unabated. We have repeatedly spoken out in favor of maintaining the federal program.

The Association has always been of the view that the delivery of legal services to the poor is an evolving process and that a variety of methods should be explored to achieve the most effective and efficient means of delivery. We are not opposed, indeed we support, careful experimentation with alternative approaches to this important problem. The need is great, and creativity in fashioning more effective ways of meeting this need is essential. We have expressed this view to Congress, to the Legal Services Corporation, and to Administration officials, including Mr. Meese, with whom we have spoken and to whom I am sending a copy of this letter.

We continue to believe the federal commitment in this area is essential. Efforts to increase local and state bar participation and responsibility, as well as recent changes which provide clearer statutory definitions of the activities of Corporation grantees, help to insure that this program is an effective and efficient method for addressing the legal needs of the poor. We stand ready, however, to consider all suggestions for improvements in the system.

We hope this clarifies the American Bar Association's policy position on legal services for the poor.

Sincerely,

John D. Shepherd

John D. Shepherd, President

cc: Members of the Committee on the Judiciary
Honorable Edwin Meese, III

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Senator **Kennedy**. You do have other information or evidence supporting your position, do you, from the president of the ABA?

Mr. **Meese**. Yes, I have discussed it with these presidents, Senator. But more than that, I do not think that the plan that I advocate has ever been proposed formally to either the American Bar Association and particularly the section on legal services for the poor. But it certainly seems to me that a plan which provides more legal services and greater resources and involves more of the bar is preferable to a narrow plan that limits that kind of services.

Senator **Kennedy**. One of the comments that you made last year when you appeared, your testimony was that you would firmly uphold the Legal Services Corporation while it was the law. The President submitted a series of nominees to the Legal Services Corporation, and serious questions arose about some of them. And we are now in a position where we have had 40 recess appointments that end run the Senate confirmation process.

Can we get a commitment from you that you will resist the temptation on further recess appointments, and that you will work to present the Senate with comfirmable nominees while this law is still on the books?

Mr. **Meese**. Senator, I cannot give that commitment because that would be at-odds with the law relating to the Legal Services Corporation. The only reason that the President had to put in recess appointments was so that the Corporation could continue to function, inasmuch as the Senate had not completed work on the nominations of the candidates that the President had put forward.

Senator **Kennedy**. Well, the fact is, some of them that were actually nominated were opposed to the program, and therefore, I am just wondering—they were not confirmed and they were appointed by recess—whether we would expect that kind of nominee from you.

Mr. **Meese**. I do not know of any, to my own knowledge, who were opposed to the program and were nominated, Senator. I certainly would not think that would be the type of person who would be nominated by this administration. As long as it is the law, I firmly believe in upholding the Legal Services Corporation Act, even though I do not think it is the best way to provide services to the poor.

I must say that under the stewardship of the current board of directors, and the boards of directors we have had, there has been a considerable improvement in the activities of the Legal Services Corporation.

Senator **Kennedy**. Last March, you said to me that it was not a disgrace that out of the 124 Reagan judicial appointments, only 2 were black. Now there have been 61 additional appointments, so that out of a total of 185, still only 2 are black.

Now, how would you characterize that record—as poor, fair, or good—or a disgrace?

Mr. **Meese**. Senator, I think that this administration has done its best to find minorities for court appointments. As a matter of fact, the record is better now overall. I think the fact that 11.96 percent of the judicial appointees by this administration have been women, that 8.6 percent have been minorities, that this is a better record than virtually any of the past several Presidents.

Senator Kennedy. Well, it is not. I have the figures on the previous administration, and it is not. But rather than getting into that, of the minority, how many are black and how many are Hispanic or Spanish-speaking?

Mr. Meese. I do not know the breakdown. I know that minorities constitute 8.6 percent.

Senator Kennedy. Well, I am telling you that there are 2 out of 185 that are black. Now, if that is the fact, how do you characterize that record?

I want to know, Mr. Meese, whether the people of this country are going to consider whether the Federal judiciary is for white males only, and I want to know what you are going to do about changing this kind of record, or are you going to do anything about it, or are you troubled by it? And if you are not troubled by it, it certainly says something to me.

Mr. Meese. Senator, I am troubled if there is any group that appears to be underrepresented——

Senator Kennedy. Well, do you think they are underrepresented—with only 2 out of 185?

Mr. Meese. Well, I think you have to look at the people who have been looked at and the ones that have been found qualified. I think it is very important that this administration and certainly, if I am confirmed by the Senate as Attorney General, I will make the greatest search to try to find as many qualified people from all minority groups for presentation to the President for judgeships.

Senator Kennedy. Well, are you saying that as an attorney—we have heard a great deal, both from your own mouth and from others, talking about your vast experience in the law and the work in California, all of which are part of the record—are you saying that there are not that kind of individuals who are black who could serve on the Federal judiciary?

Mr. Meese. Not at all, Senator. I am sure they are there, and I am sure that it would be my purpose to find them.

Senator Kennedy. Well, then, what are you saying about the current record? Are you satisfied with that, or not satisfied with it, or surprised by it, or do you have any reaction to it?

Mr. Meese. I think I feel the same way as the President does. We are not satisfied until we have reasonable representation of all minority groups. But I do know that a real effort has been made to find minority members for the judiciary.

Senator Kennedy. And you are saying they have only been able to find two blacks that have been able to meet that requirement, out of the last 185.

Mr. Meese. No.

Senator Kennedy. That is what you are saying.

Mr. Meese. No. I think there are more than that. My information is that there are more than that.

Senator Kennedy. Well, I do not know if you have. We went through this before. I indicated to you in our phone conversation that I would go over it again with you. If you have anybody there from the Justice Department who has different figures—these are the last figures that I have, and I quite frankly find it really incredible that you would not find that statistic incredible, quite frankly—having had the belief that you have, and the experience working in bar association work and working in the legal area, not to feel from your own personal understanding and awareness and knowledge that there are not more than those two blacks who are serving on the courts at this time that would be qualified, that you are not really appalled by that factor.

But the record stands that you are not, evidently.

In the Carter judges, there were a total of 262—40 women, 38 blacks, 16 Hispanics. Those were the total minorities, 94, and I will put that in the record.

Mr. MEESE. May it also show, Senator, since you referred to previous administrations, that the record is better for the past administration than the record of the Administrations of President Johnson, President Nixon, and President Ford.

Senator KENNEDY. That is right. We have made very substantial progress, Mr. Meese, in a lot of areas—a lot of areas. That is exactly right. And many of us are very concerned that we are now retreating.

Mr. MEESE. Well, that is our concern, also, Senator.

Senator KENNEDY. Well, then, what is your reaction to the *Grove City* decision and the legislation to overturn that decision? Last year it passed the House of Representatives 10-to-1 majority. In the Senate we had in excess of 60 Senators, Republican and Democrat, who recognized that addressing education only would invite the courts to continue to apply a narrow coverage principle with regard to the handicapped, with regard to the minorities, with regard to the elderly.

Mr. MEESE. Senator, this administration of which I am a member believed in extending protections to the elderly and to the handicapped and to minorities, not just women, and believed that title IX ought to be extended.

Senator KENNEDY. Well, have you had a chance to look at this years' legislation which I am sponsoring in the Senate that applies to the handicapped, the eldery, and minorities, and ensures that we cover all recipients of Federal aid under all statutes not just in education?

Mr. MEESE. Senator, the position of the administration is that it should be limited to overturning the *Grove City* decision, which was in fact educational institutions, and that if the other titles should be amended, it should be done on an issue-by-issue basis, so that there could be clarification and enforceability and less complexity in the law.

And I believe Senator Dole has introduced such a bill, with bipartisan support.

Senator KENNEDY. Well, don't you agree that since, as you well understand, the title IX provisions all come from the Civil Rights Act, all grow from the same stem—handicapped, the elderly, women—the title IX language for program of activity that they all track each other. There are those that believe if you only address the issue of institutionalwide coverage in education, since all of these statutes come from the same root, you are inviting the Supreme Court to reach the result you have in Grove City.

Now, what is your position on this?

Mr. MEESE. Senator, I think that you are not properly characterizing the *Grove City* decision. Actually, the position taken by the

Administration in Grove City was to extend the coverage. It was the position of the administration, contrary to the position in the courts below, that in the Supreme Court, the legislative history of the Pell grants did amount to Federal financial assistance, so that the provisions of title IX would apply to those particular types of grants, and that this was an extension of the law, not a narrowing or a limitation.

Now, when the decision came down, the Court held that the statute was also program-specific and that the application of title IX was only to a particular program. This administration has taken the position that we should both increase the coverage by having it apply to all activities within a given educational institution if Federal financial assistance was received in any portion of that institution, and that it should also be made broader to incorporate the provisions relating to the handicapped, racial discrimination, and the like.

Senator **Kennedy**. Mr. Meese, the Administration's policy is that the *Grove City* decision applies to title IX, section 504 and the Age Discrimination Act, because the language interpreted by the Supreme Court is also in those laws—Attorney General Brad Reynolds has been quoted by the media as taking the position that *Grove City* applies to the recipients under all four laws.

Mr Meese. That is right.

Senator **Kennedy**. Well, then, you are for the narrower interpretation, then, isn't that correct?

Mr. **Meese**. No.

Senator **Kennedy**. I am just trying to ascertain——

Mr. **Meese**. No, sir. That is a broader interpretation than what the law is now.

Senator **Kennedy**. Well, only to the extent that your own Department recognized, and Brad Reynolds recognized, that if it is left open, there are going to be similar interpretations for the other provisions in the statute itself.

Well, I have an additional area, Mr. Chairman, which I cannot cover in the 1 minute, so I will withhold at this point.

Thank you.

The **Chairman**. Senator Biden and I have just received word that the internal staff working paper from the Office of Government Ethics, which the committee requested earlier today, will be made public at 5 p.m. today. Copies of the document will be available at the Office of Government Ethics, 1717 H Street NW., room 436.

There's a vote on in the Senate. Has any Senator here voted yet? I believe the Senator from Nevada is the next up. Do you want to just take a recess?

Senator **Metzenbaum**. Mr. Chairman, it seems to me, that if the report is to be available at 5 o'clock, and the hearing's being conducted here, may I suggest that we send somebody down to pick up the report and make additional copies available, bring them up here, rather than chase a whole horde of people down there to pick them up. One person can pick them up and distribute them at this location?

The **Chairman**. Senator, I believe we've already given you a copy.

Senator **Metzenbaum**. We have a copy, but there are others who have been asking us for copies, and I'm perfectly willing, Mr. Chairman—one of my staff will go down and ask for additional copies, and bring them back here.

The **Chairman**. The investigating officer says he'll make arrangements to accomplish that.

Senator **Metzenbaum**. Thank you.

The **Chairman**. I think we'd better take a recess now, and go and vote, so we'll be in recess for about 10 minutes.

[Whereupon, a short recess was taken.]

The **Chairman**. The committee will come to order. The distinguished Senator from Nevada is next to question the witness. Senator Laxalt.

Senator **Laxalt**. Thank you, Mr Chairman. Mr. Meese, the latest shot to be fired across the Meese bow has been some coverage in the last few days concerning a purported finding of the Office of Government Ethics. The story that's been played, at least in some quarters, is to the effect that there has been an inquiry by a government office that has found Mr. Meese guilty of violations of ethics. Some have suggested that your own counsel, and even Mr. Fred Fielding, Counselor to the President in the White House, had somehow wrongly intervened in the process.

I think that my colleagues and, for that matter, the public, should know what has occurred. Where did this investigation, or this inquiry, on the part of the Office of Government Ethics start, if you know?

Mr. **Meese**. Well, Senator, I don't know of my own knowledge, but it's my understanding, based on the information provided to me by the Office of Governmental Ethics through my counsel and through the White House counsel, that they did a routine review of the independent counsel's report, and they had some of their staff attorneys review that report.

During the course of that review, they found, essentially, that in virtually all except two of the areas of inquiry by the independent counsel, there were no ethical issues or problems.

Their job was to do an exhaustive study of the report and raise any issues that they felt might be there. The staff attorneys then, in a memorandum, found questions about two issues.

They then brought these to the attention of the head of the office and the senior career person in the office, who reviewed them. They notified the White House counsel that there were two issues that they were considering and felt did properly require comment. My lawyers, exercising their normal functions, did seek to be heard on the issue.

They were heard. They prepared a very careful memorandum, a copy of which I would be happy to make available to the committee. In this memorandum, they pointed out one major factual error that had been made by these staff attorneys, which disposed of one of the issues.

Senator **Laxalt**. The factual error that they made pertained to your knowledge of the Barrack situation?

Mr. **Meese**. Yes, Senator, that's correct. And as to the other issue, which related to my meeting with Mr. McKean, my lawyers presented both the information from the independent counsel's report, as well as the applicable law on the subject, and it was found that there was no issue there that required action in regard to any violation of the standards of conduct.

Senator **Laxalt**. In summary, then, this office is properly carrying out its responsibilities, addressed the myriad of charges that have been levelled against you, and examined the ethical implications arising from the Stein report. Is that right?

Mr Meese. Yes, Senator, and after all of that inquiry at the staff level, as I say, they found only two issues that were even raised, and the ultimate conclusion of the Office of Governmental Ethics was that there was no basis to take action on those two issues.

Senator **Laxalt**. And the Office of Government Ethics working paper that's been circulated widely in the media really was not a final report of the office, but was merely a preliminary staff memorandum?

Mr. **Meese**. That is correct, Senator. As a matter of fact, it's my understanding that the Wall Street Journal, which had initially circulated that report, was erroneous, and they printed a correction in today's edition.

Senator **Laxalt**. There was nothing untoward, then, about the matter being presented to the White House counsel, or, for that matter, to your counsel, Mr. Garment. That would be in the interests of ordinary due process, would it not?

Mr. **Meese**. Yes, Senator, that's my understanding.

Senator **Laxalt**. So there was nothing unusual about counsel being given the opportunity to respond?

Mr. **Meese**. Yes, as a matter of fact, it would be unusual, and perhaps a violation of due process, if we were not given the opportunity to respond.

Senator **Laxalt**. And the Office of Government Ethics eventually found that there are no ethical violations whatsoever arising out of any of these transactions on the part of Ed Meese?

Mr. **Meese**. That's my understanding.

Senator **Laxalt**. And as the chairman knows, we'll have access to the report and the memorandum later in the day, so that we can examine them.

The **Chairman**. Right.

Senator **Laxalt**. Just a couple of questions regarding your financial disclosure. It's been suggested there, that you were careless. I don't think anyone has suggested that you intentionally omitted anything, but perhaps you could give us some perspective on your situation and that of others who came to this Government from other States, such as California, as part of a new administration: had you previously, in any of your governmental business, been required to file a financial disclosure statement?

Mr. **Meese**. No, sir. This was a totally new form, as far as I was concerned.

Senator **Laxalt**. And this was a new experience for almost everybody in the administration?

Mr. **Meese**. Yes, Senator.

Senator **Laxalt**. And did anybody in or out of this Government ever sit down and brief you, or others comparably situated, about the solemnity of this document, and how important it was that it be detailed to the final degree? Was that told to any of you by way of raising your consciousness or sensitivity about the importance of the document?

Mr. **Meese**. Senator, we did receive a briefing on the document but my understanding and the understanding of other members of the White House as to its importance I think has grown over the years that we've been here. It also was one of a number of forms that had to be filled out at the time that we entered Government service, so that there was a myriad of recordkeeping and form filling out that had to go on at approximately the same time.

Senator **Laxalt**. Ed, I might point out for the record that problems with these disclosure forms existed not only in the executive branch, but up here on the Hill also. I remember full well that after Congressman Hanson was indicted for filing an incomplete disclosure form, there was a rush by several people here on the Hill immediately to look at their own disclosure forms, and to try to correct them.

I think that the record should note Congress' own fallibility with regard to disclosure forms. This requirement is a relatively new innovation here in Washington—both downtown and, for that matter, here on the Hill.

The ethics report makes reference to appearances. As I said earlier, talk of appearances is fine, and that's a game we all play around here, but when the facts are available we should make a decision and reach our conclusions based upon those facts.

I was pleased that this was the process followed by the Office of Government Ethics. The staff working paper raised the question of appearances. The Office then looked behind the appearances to the substantive facts in connection with both the McKean transaction and the Barrack transaction, and found that there wasn't any substance to the allegations. Therefore the "appearance problem" should dissolve, as it did.

In answer to earlier remarks: of course, appearances do govern as a practical matter, and perhaps should, because perceptions are important. But where, as here, we have had an intense investigation by professionals, and where findings of fact have been made, it seems to me that it's irresponsible for us, as committee members, or for anybody else, to be governed purely by abstract perceptions not based on the facts themselves.

Now do you disagree with that basic premise?

Mr. **Meese**. No, Senator, I agree, and I think that is wholly consistent with the evidence that was adduced in the Independent Counsel's report, which was the basis for the conclusion of the Office of Governmental Ethics, that there was no violation.

Senator **Laxalt**. Mr. Chairman, I believe that I have touched on the areas that I wanted to cover. In the interest of time, I will withhold further questions for now. I thank the witness.

The **Chairman**. Thank you very much.

I might state that the Office of Ethics staff working papers are—and I think it's important to get this characterization correct—just that, working papers which include conclusions reached by two members of Mr. David Martin's staff at the Office of Government Ethics.

This document was submitted to Mr. Martin for his review, and for his consideration, as to what if any further action was required, all in accordance with standard procedures of the Office of Government Ethics.

Again it is important to note that the staff attorneys were responsible for reviewing all the ramifications involved in the Stein report, and advising their Director accordingly.

As I understand it, after receiving the working memo from his attorneys, Mr. Martin had frank and open discussion with his staff in order to properly evaluate their suggestions. We now have the staff working papers, and tomorrow we will have the principals involved in the preparation of this document, and can question them regarding their suggested conclusions.

Now Senator Biden and I requested this staff memo, and they have agreed to furnish it, and have furnished it, and we're going to have it duplicated, and make it available.

The distinguished Senator from Ohio, Senator Metzenbaum.

Senator **METZENBAUM**. Thank you, Mr. Chairman. Mr. Meese, I'm not going to question you on this subject unless you want to make some statement, but there seems to be confusion added to confusion about that report. And I'm not sure that you yourself are aware of the facts.

But I just heard this exchange between you and Senator Laxalt about the mistake that the investigators had made, or the two staff members had made. And I'm referring to the fact concerning the Barrack purchase involvement in the home, and his appointment to a position, first, in the Commerce Department, and then in the Interior Department.

In The Wall Street Journal article it states:

> Mr. Martin said he quickly ruled out any appearance problem on the Barrack matter, when Mr. Meese's lawyers confirmed to him, that the Special Independent Investigator, Jacob Stein, had found no evidence showing Mr. Meese was aware of Mr. Barrack's help on the home sale at the time Mr. Barrack got the appointment. Mr. Martin said his staff had misread the Stein report on that matter.

Now the relevance of that was whether or not you did know, and had any relationship with Mr. Barrack, when Mr. Barrack got his positions.

And then Senator Laxalt's questions to you, and your responses, indicated that there was a factual error. Let me point out to you, that I think the factual error is in reverse. The Stein report is not wrong, and the staff investigators were not wrong, because you did indeed have a relationship with Mr. Barrack before he received his appointments.

He received his appointment to Interior in late November 1982. He received his appointment to Commerce on February 13, 1983. The facts are, that on August 8, 1982, about 3 or 4 months before he received the appointment to Interior, you and Mr. Barrack had a telephone call, and you indicated on page 189 of the Stein report, that you spoke briefly with Mr. Barrack at that time.

On August 9, 1 day later, you wrote a letter to Mr. Barrack, and which was ostensibly dictated by you but signed by a secretary in your office, which referred to the previous day's telephone conversation, and in that letter, you stated that you would contact Mr. Barrack later about picking up a key to the house. And you enclosed materials concerning the house which had been prepared by

Coldwell-Banker, and that's to be found in the Stein report at page 189.

On August 13, there was a telephone call from you to Mr. Barrack, in which you discussed the financing of the house, and at that point, you also suggested that Mr. Barrack call Mr. Schmidt at Great American about possible financing for the property. On August 18, there was a telephone call between you and Mr. Barrack in which you discussed the terms of the house sale. "Mr. Meese told us that because no real estate commissions were involved, he was willing to accept a price in the range of $300,000 to $310,000" and there were other discussions about trust sales and Barrack's advice to Howard. That's to be found on page 196 of the Stein report.

In late August and early September, there was a meeting in the White House, your office, and a telephone call, and the Stein report cites that "While in Washington in early September 1982, Mr. Barrack also met Mr. Meese for the first time. Mr. Meese had no recollection of Mr. Barrack's September 8 visit to his office until he found and reviewed a letter in his files. He did not recall what was discussed or if anyone else was present. He also did not recall if he knew that Mr. Barrack had been interviewed by people in OPP. Mr. Meese believed that at about this same time, although perhaps before September 1, he had telephoned Mr. Barrack to thank him for his assistance in selling the house." Then, there was dinner in Georgetown with the Barracks, that you and Mrs. Meese had, and Mrs. Meese said at that time, about Mr. Barrack when he walked in, because he didn't know what he looked like, "He'll be the one with the halo around his head."

And Thanksgiving, you spent time at the Barrack ranch. In December, there was a birthday party at your home, and so forth. The fact is all of that, much of that took place before the November 1982 appointment, when Mr. Watt made the appointment to Interior, and certainly, all of it was before the February 13, 1983, appointment to Commerce.

Now my questions are going to go to a different aspect of your conduct.

Mr. MEESE. Well, may I comment on that, Senator?

Senator METZENBAUM. Yes. I was going to say, but because I don't want to be unfair to you, you're welcome to comment.

Mr. MEESE. Well, I believe that all of the things you have just stated, Senator, are totally irrelevant to the report and the working papers of the Office of Government Ethics, inasmuch as it's my understanding that the factual error they made had to do with whether I knew that Mr. Barrack had put money into the transaction.

They had assumed that somehow I knew that, and that was the basis for their tentative conclusion. On the other hand, the facts are, of course, as was brought out in testimony before this committee here last year and was confirmed in the independent counsel's report, that I had no knowledge of any financial interest of Mr. Barrack in the transaction at all until the hearings before this committee in March 1984.

Senator METZENBAUM. Well, you know that the Stein report says:

We assume that the assistance the Meeses received from Mr. Barrack in connection with selling their property in California was, quote, "something of value," end of quote, within the meaning of the applicable statutes. Although the case law is not clear with respect to intangibles, we found that Mr. Barrack assisted the Meeses in several respects. He found the Howards to buy the property, negotiated the initial price and other terms of the sale with Mr. Meese, and negotiated both the facts—the final sales price and the Howard's loan at the bank. These facts were known to Mr. Meese.

And the question that the staff members were talking about, was addressing themselves to the question of whether or not you knew of Mr. Barrack's help in connection with your home, sale of your home, whether it had to do with the $83,000 that he put in to the sale, or, whether it had to do with this kind of help that he gave you in connection with the sale of the house, and charged you no real estate commission.

Mr. **Meese**. I think, Senator, that the working papers will speak for themselves as to what factual error the Office of Government Ethics made. However, I think it should be pointed out, in regard to the statement you just read, that the most important aspect of this whole thing was that the independent counsel found very clearly that I had done nothing to assist Mr. Barrack in getting either of those two jobs and that, therefore, there could be no legal or ethical violation.

Senator **Metzenbaum**. We'll get in to that at a later time, Mr. Meese. Did you care to say anything further?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. Would you briefly state your understanding of the general rule involving conflict of interest, and the standards of conduct governing executive branch employees.

Mr. **Meese**. The general rules are that persons should conduct themselves in such a way so that they do not do anything that would appear to create a conflict of interest—that is, something in which they are personally involved, and some performance of their official duties.

Senator **Metzenbaum**. And are you familiar with the more specific rule on receiving gifts, favors, loans, and other things of monetary value?

Mr. **Meese**. Yes; I am.

Senator **Metzenbaum**. Would you care to tell the committee your understanding of that rule.

Mr. **Meese**. A person should not receive gifts, loans, or other things of value from someone, where his personal official act would affect that individual.

Senator **Metzenbaum**. Or might be affected.

Mr. **Meese**. Or might be affected.

Senator **Metzenbaum**. Now these rules are based on the 1965 Executive order issued by President Johnson, and they've been included in the Code of Federal Regulations since that time. Is that correct, your understanding?

Mr. **Meese**. That's my understanding.

Senator **Metzenbaum**. Now Senator Biden had gotten in to the question of the McKean appointment to the Postal Board of Governors. Just briefly, in June 1981, you received from McKean a $40,000 unsecured loan, arranged quickly and informally, with no interest payable for a year, from a man who, up until that first meeting, was a total stranger to you.

On July 27, a month after you received the $40,000 loan, McKean's name comes up at a senior staff meeting for a Presidential appointment to the Postal Board of Governors.

His name's not on the list of candidates recommended by the personnel office. You've known him for a month. You've met with him exactly twice. He has loaned you $40,000.

Now, you indicated to us earlier, that in that meeting, you say to the other three, "Mr. McKean is my accountant." Isn't that what you testified a little bit earlier today?

Mr. **Meese**. I said that I believed I had said that. At the least, Mr. Deaver certainly knew that he was my accountant since he had recommended him.

Senator **Metzenbaum**. But Mr. Baker didn't know that.

Mr. **Meese**. He may or may not. I don't know whether he did or not.

Senator **Metzenbaum**. Well, then let me read you what the Stein report found. "None of those present at the senior staff meeting recalled any discussion of the fact that Mr. McKean was Mr. Meese's accountant, nor of knowing that Mr. McKean had just arranged a loan for Mr. Meese."

Is the Stein report inaccurate in that?

Mr. **Meese**. Entirely possible. That's why I say that I thought that I'd mentioned that he was my accountant. It may or may not have been recalled by the others. I can't recall for sure whether I did, Senator, but it was immaterial, of course, because as the Independent Counsel found, there was no evidence that I had solicited a loan from Mr. McKean with the express or implied intention of assisting him in obtaining a Government position, or that Mr. McKean offered to arrange a loan in the expectation or understanding that I would so assist him.

Senator **Metzenbaum**. Yes. And therefore, he didn't find it appropriate that there be a criminal indictment?

Mr. **Meese**. No, and I believe that that evidence also shows that there was no ethical violation.

Senator **Metzenbaum**. According to the report, you actually said at that meeting, that you thought he would be good for the job.

Mr. **Meese**. Well, I believe I related earlier what happened. Mr. Deaver said that he thought he would be an outstanding choice for that position and said, "You know him. Don't you think so, Ed?" or words to that effect, and I replied in the affirmative.

Senator **Metzenbaum**. Well, as a matter of fact, the Stein report specifically says that you thought he would be good for the job.

Mr. **Meese**. I think that's what you could construe from the answer I just gave; yes, sir.

Senator **Metzenbaum**. Why didn't you recuse yourself when that matter was before the Personnel Committee?

Mr. **Meese**. Well, first of all, I had received nothing of value from Mr. McKean, inasmuch as this was an arm's length transaction, as the Independent Counsel found out.

They further found that, on the basis of the business transactions, my accountant was arranging a loan that was a pure arm's length business proposition for which I received no benefit. In fact, as the Independent Counsel points out, I was paying a higher rate of interest than the normal market rate at the time.

Senator **METZENBAUM**. No, he doesn't point that out.

Mr. **MEESE**. Yes. I believe he does.

Senator **METZENBAUM**. Would you point that out to me, where he says that you were paying 21 percent, and the prime rate at that point was 18 per—was 20 percent. You were—but that was just for the first 3 months. Thereafter, you were to pay 18 percent, or whatever the prime rate was at Great American Bank, or Bank of America, one of those two.

Mr. **MEESE**. No, I believe in the Independent Counsel's report, Senator, that they point out that Mr. McKean informed me at the time that he was making the loan, that I would have to pay a higher rate than the normal bank rate of interest, and the report also says that at all times I did pay a higher rate than the bank rate of interest. Indeed, it was figured at the rate of 3 points over prime.

Senator **METZENBAUM**. Well, the fact is—and I'm sure we can find it—that you paid exactly what I just said: 21 percent when the prime rate was 20, but that was only to be for 3 months, and then the note provided it was to go down to 18 percent, unless the Bank of America prime rate was that——

Mr. **MEESE**. Or 3 points over Bank of America prime.

Senator **METZENBAUM**. Where do you find that in the Stein report? I don't—I must have missed that. Where do you find 3 points over prime?

Mr. **MEESE**. It was—or excuse me. It was 18 percent, I believe. I believe that the interest rate was 3 points over prime.

Senator **METZENBAUM**. No. I just said to you, that prime at that time was 20 percent, when you made the loan. You were paying 21 percent which was 1 point over prime.

Mr. **MEESE**. I'll have to find it in the report.

Senator **METZENBAUM**. There's no place you paid over 3 points over prime, at least that came to my attention. You paid—most people can't go to a bank, as an individual, and borrow at prime, particularly on an unsecured loan, particularly when there's no payment due for 1 year, and you paid no interest for longer than that period, and you made no payments for that. Most people can't go to the bank and do that, can they?

Mr. **MEESE**. Yes. I'm sure that such a loan can be worked out. But this loan was in this particular case over the bank rate at all times, Senator.

Senator **METZENBAUM**. Well, show me where the Stein report says that.

Mr. **MEESE**. Well, it said that Mr. McKean said to me that I would be——

Senator **METZENBAUM**. "Basically, they agreed"—and I'm reading from page 114, if you want to turn to it. "Basically, they agreed that the loan would be for at least 1 year at an interest rate of 21 percent for the first 3 months, and 18 percent for the Bank of America prime rate, whichever was higher, thereafter, and with no interest payable immediately." On June 17, 1981, the prime rate was 20 percent. Now where do you get the 3 percent?

Mr. **Meese**. And after that, the prime rate dropped abruptly and I was left at an 18-percent rate, and I did continue to pay an——

Senator **Metzenbaum**. Where do you find that? Where do you find that in here?

Mr. **Meese**. That's information that I know, as to what I paid.

Senator **Metzenbaum**. Well, but the point is, that I don't know what the facts are with respect to when it dropped, and what rate you paid. But I——

Mr. **Meese**. Well, I do, Senator.

Senator **Metzenbaum** [continuing]. Do know that when you made the loan, when you were—when Mr. McKean was up for appointment, at that point you had a loan with no payments due on it for 1 year. You were to pay 1 percent over prime for the first 3 months. You were to pay 18 percent thereafter, or the Bank of America prime rate, whichever was higher.

Now that sounds to me like pretty good terms, wouldn't you say?

Mr. **Meese**. Senator, on page 114 of that report:

> Mr. McKean said that he told the Meeses that if they desired to take advantage of his client base—that is, a loan through his firm—he believed the resources were available; but the Meeses would have to pay a slightly higher interest rate. Mr. Meese also recalled Mr. McKean's telling him the interest rate would be somewhat higher if the Meeses borrowed from firm sources rather than from a bank.

Senator **Metzenbaum**. Well, the fact is, what you paid is what the Stein report says: you paid 21 and 18——

Mr. **Meese**. That's right, which is higher than the bank rate.

Senator **Hatch**. Senator, would you yield? I might be able to help you. On page 146——

Senator **Metzenbaum**. No. It's on my time.

Senator **Hatch**. Well, let me just——

Senator **Metzenbaum**. I'll be very happy—I think you're next——

Senator **Hatch**. Well, take it out of my time, but I think you should have the benefit of this. In the Stein report, it says on page 146:

> Furthermore the loan Mr. McKean arranged appeared to have an arm's length transaction, and the stated rate of interest was higher than Mr. Meese would have paid, had be been able to negotiate a loan from a bank to be secured by a second mortgage on his Virginia home.

Senator **Metzenbaum**. Why don't you continue reading about:

> Nonetheless, it could be concluded, and we assumed, arguendo, for purposes of our analysis, that Mr. McKean afforded the Meeses something of value, by arranging for them, quickly, and on an informal basis, an unsecured $40,000 loan, later increased to $60,000, with no interest payable for at least a year, particularly inasmuch as at a later time, interest payments were waived for over 14 months.

Senator **Hatch**. And then if you continue reading, it says, "Even assuming——

Senator **Metzenbaum**. May I go on, Senator.

Senator **Hatch**. Let it be taken off of my time?

Senator **Metzenbaum**. May I just go on?

Senator **Hatch** [reading]. "Even assuming such a conclusion, however——

Senator **Metzenbaum**. Senator Thurmond, will you check out that I don't use my time?

The **Chairman**. We'll charge that against him.

Senator HATCH. Yes, that's fine. I'd like to just go on.

The CHAIRMAN. Well, I think as long as you're on that point right there, I charge against my time this sentence:

> Even assuming such a conclusion, however, there is no evidence, that at the time the loan arrangements were made, Mr. McKean was interested in, or even contemplated a federal position. His actions were consistent with a professional interest in representing his client as a financial manager and accountant.

You may proceed.

Senator METZENBAUM. Now just a minute. I insist. I have not interrupted any other witnesses, and I don't intend to be interrupted further, so if I may proceed.

Now Mr. Meese—Mr. Meese—I almost called you McKean—you told us earlier, that you knew that the loan was not from McKean personally but from others.

Let me point out to you that the Stein report on page 143 reads as follows: You had made the loan—I might refresh your recollection—in June 1981:

> On June 1, 1982, a memorandum in White House Counsel's file, recorded a conversation between Mr. Meese and Fred F. Fielding, Counsel to the President, in which Mr. Meese stated that the loan was, quote: "From McKean personally and not from any company, group or organization." Period, end of quote.
>
> Mr. Meese stated that while he did not recall the specific conversation leading to the note, he always regarded his contact on the loan as being solely with Mr. McKean rather than anyone else.

And then skipping a bit:

> And that if asked whether the loan was from McKean, or anyone else, he would probably have identified it as having come from Mr. McKean.

Now your meetings having to do with Mr. McKean's appointment to the Postal Board came between that June 1981 date and the June 1, 1982, date, and at that time, according to your note to Mr. Fielding, you thought that Mr. McKean was the source of your, of the funds, didn't you?

Mr. MEESE. No, Senator, because the part you left out says:

> Mr. Meese further stated that he had never had conversations with Mr. McKean after June 1981 about the source of the funds, that he had always understood that the funds had come from firm sources, not from Mr. McKean's personal assets.

Senator METZENBAUM. And then the sentence continues on in saying that he would probably have identified it as having come from Mr. McKean.

Mr. MEESE. Come from Mr. McKean only in the sense that he was the person with whom I dealt. I think it's pretty clear from this statement——

Senator METZENBAUM. I think it is quite clear that——

Mr. MEESE. Yes, sir.

Senator METZENBAUM [continuing]. You—that Mr. McKean had arranged the loan for you, and you said in the meeting.

Mr. MEESE. That's what I've always testified to, that he arranged the loan for me from firm sources.

Senator METZENBAUM. Now let me ask you this: you said anybody could make that kind of a loan. Do you think anybody could make an unsecured loan for $40,000, with no interest payable for 1 year, from a man they'd never met before? Do you think that was a customary loan?

Mr. **Meese**. Yes, Senator, it was. Mr. McKean had been referred to me by Mr. Deaver, who knew him quite well and for whom he had served as an accountant. Mr. McKean had confidence in me. He knew quite a bit about me. At that time my status as a public official was not totally unknown. He also knew that I had roots in the Alameda County area where he personally lives, and had confidence that this was a good loan. Otherwise, he wouldn't have made it.

The report is replete with evidence from Mr. McKean that he felt that way about the loan.

Senator **Metzenbaum**. Now did it cross your mind at the time of the meeting in connection with Mr. McKean's appointment that the White House standards of conduct regarding the appearance of a conflict of interest, and acceptance of things of monetary value might be applicable? Did that occur to you at all?

Mr. **Meese**. No, Senator; it didn't, because there was no connection between the two, as is clearly pointed out.

Senator **Metzenbaum**. Did it cross your mind, based upon your general sense of ethical standards, that it might not be wise to participate in that decision?

Mr. **Meese**. Senator, at the time it never crossed my mind at all because there was no connection between the two transactions whatsoever, and I did not believe I was receiving anything of value or any favors from Mr. McKean.

Senator **Metzenbaum**. So if you had it to do over again, you would conduct yourself in exactly the same manner?

Mr. **Meese**. No, Senator, as I answered Senator Biden earlier, and other Senators, I've learned a great deal from this experience, and if in the future a similar situation occurred, I would go overboard to avoid any appearance that might be construed, misconstrued, or misinterpreted, or even distorted.

Senator **Metzenbaum**. In your view, do the standards of conduct prohibit a senior Government official from recommending a Presidential appointment for a person who has just arranged a loan on special terms, not customarily available?

Mr. **Meese**. It would depend on the circumstances, Senator.

Senator **Metzenbaum**. What circumstances?

Mr. **Meese**. It would depend on the circumstances of the particular case.

Senator **Metzenbaum**. Well, tell me some in which it would not prohibit a senior Government official from recommending a Presidential appointment for a person who has just arranged a loan on special terms not customarily available. Tell me what circumstances.

Mr. **Meese**. Well, I think if, in a casual conversation in the White House, someone said, "What do you think of so and so?" and you answered, "I think he's a good person," I think that would be the kind of circumstance where there wouldn't be any violation of the ethical standards.

Senator **Metzenbaum**. Well, we're talking about recommending, officially recommending a Presidential appointment.

Mr. **Meese**. Well, it would depend on whether he was part of a group that was merely reviewing something or whether this person had the sole recommending power.

Senator METZENBAUM. Now in December 1981, you called Mr. McKean and asked him to arrange an additional $20,000 loan for you. That loan, like the earlier $40,000 loan, was unsecured, and no interest was payable for a year.

In July 1982, interest payments were due on the first loan but you did not make them. In fact you did not make any payments on that loan, or the $20,000 loan until August 1983, after newspaper stories made these loans public, and more than 2 years after the first loan was made.

The Stein report indicates that on November 8, 1982, you met with Mr. McKean to sign replacement notes for the loan. The agenda of this meeting suggests that Mr. McKean at this meeting mentioned he wanted an appointment to a longer term on the Postal Board of Governors. According to the Stein report, Mr. McKean recalls that he asked you to support him, and you agreed to do so. As a matter of fact, Mr. McKean had sent you a letter on November 4, 1982, saying:

> DEAR ED: I'm planning to meet with you as scheduled, at 6:00 p.m., November 8th, in Washington. In preparation, I've attached certain enclosures. I thought it helpful we set out a tentative agenda. (1) Note renewals. (2) Interest billing.

And then there's (*a*), (*b*), and (*c*) under that about the interest, and $12,000 due.

> (3) Reimbursement to John McKean Accountants for Virginia taxes that they had advanced for you. (4) United States Postal Board Of Governors term of office attachment. Malek nomination was withdrawn.

And then 5, 6, and 7 had to do with other matters relating to your business matters.

The CHAIRMAN. Senator, your time is up, not counting interruptions.

Senator METZENBAUM. May I just finish, Senator?

The CHAIRMAN. I'll give you 3 more minutes.

Senator METZENBAUM. In other words, the evidence strongly suggests that the same meeting in which Mr. McKean allowed you to defer payments on the credit he arranged for you, he asked for your support to help him get a 9-year Presidential appointment, and you agreed 9 days later, at the Senior Staff meeting, when Mr. McKean's name came up for a renomination to a longer term on the Board.

At that time you had talked with Mr. McKean a handful of times almost exclusively about your finances. You had not made any payments on $60,000 in loans from Mr. McKean, even though the original $40,000 loan was now a year and a half old. Yet you participated in the decision to recommend him for a longer term, and you said nothing to anyone on the Senior Staff committee about your financial relationship.

I have a number of questions on this subject, but I'll ask you one so that I may conclude. If you had it to do over again, would you have failed to disclose to the other members of the appointing group, of your financial relationships with Mr. McKean?

Mr. MEESE. Well, Senator, at the second meeting the other members of the group knew all about my financial relationships with Mr. McKean, but in answer to your specific question, at all times, as I say, bending over backward as I certainly would in the future, I would either make known my financial relationships or take some other appropriate action.

Senator **Metzenbaum**. Mr. Chairman, my time has expired.

The **Chairman**. The distinguished Senator from Utah, Senator Hatch.

Senator **Hatch**. Thank you so much, Mr. Chairman. I don't intend to take much time. As a Presidential advisor, Mr. Meese, you had a great deal to do at the White House besides Presidential appointments, is that correct?

Mr. **Meese**. Senator, I did, in the sense that I had very little to do, actually, with Presidential appointments. My principal duties were elsewhere.

Senator **Hatch**. What percentage of your time would you say you spent on Presidential appointments—whether they were confirmable appointments, or not?

Mr. **Meese**. Probably less than 5 percent, maybe closer to 3 percent.

Senator **Hatch**. You had innumerable meetings with Members of Congress, with people in the administration, and with the President himself, you attended various meetings with the President himself, worked with all kinds of people, both in and outside of Washington, you made speeches, and traveled. Am I fairly well summarizing a small portion of what you had to do?

Mr. **Meese**. Yes, Senator. As a matter of fact, in the White House, the Office of Presidential Personnel was an office that reported to one of the other principal assistants to the President. It reported to Mr. Baker. It did not report to me. So that my work in personnel was only to participate in the review meetings where the work of the Presidential Personnel Office was periodically reviewed, usually on a weekly basis, and occasionally to sit in with the President when he made the actual decisions.

Senator **Hatch**. So, generally, by the time these personnel appointments got to you they had gone through a whole series of various considerations by different people in the White House. Is that correct?

Mr. **Meese**. Yes, sir. As a matter of fact, any action that I would take would normally be a negative action, if I would object to a particular position being filled by an individual, and that—I would say—happened less than once in 200 times.

Senator **Hatch**. The Stein report says on page 19:

> For example, according to statistics supplied by Mr. Meese's counsel, from January 1981 to April 1984, the Senior Staff was involved in approximately 734 full-time and 465 part-time President appointments requiring Senate confirmation, and sixteen full-time and 1,653 part-time nominations not requiring Senate approval, a total of more than 2,800 appointments.

Is that correct?

Mr. **Meese**. That's approximately correct; yes, sir.

Senator **Hatch**. It's a great number of appointments for somebody who's so busy with so many other things, isn't it?

Mr. **Meese**. Yes, sir. That's correct.

Senator **Hatch**. The Stein report goes on to say:

> Deliberations over many, if not most of these appointments, probably consumed no more than a minute or two.

Would that be a fair estimation?

Mr. **Meese**. That would be, and sometimes, even less.

Senator **Hatch**. Sometimes just seconds?

Mr. **Meese**. Our function was a review function, not an appointment or recommending function as such.

Senator **Hatch**. "This investigation has focused on approximately 10 of the roughly 2,800 prospective appointees Mr. Meese might be said to have supported, by virtue of his attendance at senior staff personnel meetings." That's what the report says. I think it makes some interesting observations.

The truth of the matter is that the independent counsel found, "Furthermore, the loan Mr. McKean arranged appeared to have been an arm's length transaction, and the stated rate of interest was higher than Mr. Meese would have paid had he been able to negotiate a loan from a bank, to be secured by a second mortgage on his Virginia home."

It goes on: "Nonetheless, it could be concluded, and we assumed, arguendo, for purposes of our analysis, that Mr. McKean afforded the Meeses something of value, by arranging for them quickly, and on an informal basis, an unsecured $40,000 loan, later increased to $60,000 with no interest payable for at least a year, particularly in as much as at a later time interest payments were waived for over 14 months." The report goes on to say: "Even assuming such a conclusion, however—even assuming you think the worse—there is no evidence that at the time the loan arrangements were made, Mr. McKean was interested in or even contemplated a Federal position."

The report also goes on to say, "Similarly, there is no evidence that Mr. Meese sought Mr. McKean's assistance in obtaining a loan with the intention of promising him anything, in exchange, or that Mr. Meese in fact initiated any action to propose Mr. McKean for the Postal Board." The report goes on and on.

For this reason I'm a little bit outraged by what's been going on here. These facts that the special counsel brought out are almost entirely ignored by your accusers and those who are criticizing you. I think that's something to think about.

What I conclude to be the truth of the matter is, that the independent counsel determined the loan to be an arm's length transaction, which had a stated rate of interest higher than what you normally would have paid. The report merely assumes, arguendo, that you received "something of value," from Mr. McKean. This is quite a bit different from the assertion of Common Cause, their representation that you received "very substantial favors." All this—you seem to be getting blamed for all this—because out of 2,800 appointments, you said he's a pretty good guy. I find that outrageous. That's not even the worse of the vilification that's been coming your way.

I have other questions, but I think I'll reserve the balance of my time, Mr. Chairman. I'll be happy to raise other questions or make other comments later.

The **Chairman**. Are you through, Senator?

Senator **Hatch**. I'll reserve the balance of my time, Mr. Chairman.

The **Chairman**. The distinguished Senator from Arizona. Mr. DeConcini.

Senator **DeConcini**. Thank you, Mr. Chairman. Mr. Meese, I have spent some time reviewing Mr. Stein's report. Some of the report is very clear, and with that part I'm satisfied, as I said earlier. I'm satisfied as to the noncriminality that was the determination of Mr. Stein. There are a couple of questions that I raise here, and I want it to be very clear to the committee and you, Mr. Meese that I'm not raising these for any reason other than trying to understand myself, because I don't, and I expect you do. You can help me. One of those problems was the loan on January 7, 1981, from Mr. Thomas, that was used for stock purchases. Now, for the record, can you explain to me why you made that arrangement; how that came about. I want to understand it. I understand investment speculation and I understand the need to supplement one's income.

But I'd like to know from you how this relationship started—why you borrowed the money, who mentioned it, you, or he, or your wife, and, of course why you did not disclose it. Merely a mistake? I think that's what happened, that you forgot about it. But I'd like for the record to be clear on that loan. It would help me.

Mr. **Meese**. Senator, as you point out, this is all discussed in the independent counsel report, and if I may in effect paraphrase that report: the independent counsel found, and the facts are, that the Thomas family have been long-time friends of the Meese family.

Our children have grown up together, literally, when we lived in Sacramento, but more particularly, since that time, they had attended various activities together and knew each other, roomed together at conventions, things like that.

Mr. Thomas had worked with me when I was the chief of staff to the Governor of California. He was the administrative officer to the cabinet and worked very closely with me. Later on, when he was working at another place, I asked him in about 1978, I believe, to come with me as my associate director of the center for criminal justice policy and management. He did that, worked very closely with me, and moved to San Diego. Our families again resumed the close relationship. So that it was not unusual for my wife and Mr. Thomas, and myself, to discuss financial matters, particularly since on one occasion he had loaned us money when we needed it for a short time, and so on.

He also was very interested in the stockmarket, and to my knowledge had done fairly well in the stockmarket, and on a number of occasions suggested to me that I ought to get involved in the purchase and sale of stocks as a means of supplementing our income, particularly in regard to providing for the education of our children. We had children about the same age.

Senator **DeConcini**. Is that how this transaction came up?

Mr. **Meese**. Yes, sir. In the fall of 1980, Mr. Thomas who was in effect tending the shop at the center for criminal justice while I was in Washington, was talking with my wife, and he mentioned to her that he was buying some stock which was about to come out. He was planning to purchase some stock, a new issue that was coming out, as a means of providing for the education of his kids. He thought that there would be a quick appreciation of the stock and that this would provide a fund for sending his children to college.

We had two children yet to go to college ourselves, and so my wife thought this might be a good idea for us. As the independent counsel points out, in the course of the conversation, she indicated that she did not have any ready cash to purchase the stock.

Mr. Thomas indicated that they had just sold their home and had a surplus of cash and that he would be happy to lend her some money to buy the shares of stock. I think they were roughly equivalent amounts of stock for each of our two children and each of their two children.

That's what was done and that's why the loan—it was actually from Mrs. Thomas to Mrs. Meese in January—was done. The proceeds of that loan were then used to purchase the stock.

Senator DECONCINI. Is that the reason it was not listed on the forms?

Mr. MEESE. Yes, sir. I had a very, you might call it, tangential relationship. My wife had told me about it in passing in the infrequent visits.

Senator DECONCINI. You knew of it?

Mr. MEESE. So, I knew of it——

Senator DECONCINI. And you knew it wasn't necessary, or, had you forgotten it?

Mr. MEESE. No; it never registered to me that this was the kind of thing—when I was filling out the financial disclosure form, where it talked about liabilities, that use such things as margin accounts and notes and things like that. It just never registered with me, as the independent counsel found, that this was the type of thing that ought to be reported there as a liability.

This had been an informal, no-note, no-writing, no-interest, no-due date—that sort—of transaction. And it just never occurred to me at the time.

Senator DECONCINI. If I understand Mr. Stein's report, you did not list the stock purchase either.

Mr. MEESE. No; that also totally eluded me at the time, because I didn't have any records or anything there that would have led me to put it on the form at the time that I filled it out.

Senator DECONCINI. Your wife had all those records.

Mr. MEESE. Well, actually there were no records at the time I initially filled out the form because we hadn't purchased the stock yet. That sale didn't go through until the end of January.

Senator DECONCINI. How about in 1982?

Mr. MEESE. In 1982 someone else filled out the form, and they copied from the year before, and we totally forgot it.

Senator DECONCINI. And you did not talk to your wife about it?

Mr. MEESE. No; although the person filling out the form did, but we just totally forgot about that stock because we never had the stock in our possession. It was held by the brokerage firm.

Senator DECONCINI. Mr. Meese, given that, and I can accept someone forgetting a loan transaction, in early 1981 you and your wife had two loans on your home in California. These loans were for a total of approximately $120,000. You were in the process of negotiating for both a bridge loan to pay the downpayment of your home in Virginia, and for a first mortgage on that home in Virginia.

These loans were for a total of roughly $280,000. You were about to assume $400,000 plus of mortgages. You had not paid the monthly payments according to the records contained in the Stein report, for 11 months. Yet, you went out and borrowed $15,000 for a highly speculative stock purchase. Can you tell me, what judgment process was involved that lead you to do that; second, did you have other assets?

Mr. MEESE. Well, the time sequence is a little different, Senator. The time sequence was that the loan had been arranged in the fall of 1980 and actually consummated in January 1981. This is before we either purchased the house in Virginia or incurred the bridge loan.

But as far as what our——

Senator DECONCINI. Had you made the stock purchase before this?

Mr. MEESE. Yes, sir. That was all before this, any of these other loans were taken out.

Senator DECONCINI. OK. That was not clear to me under the Stein report. What you're saying is that the loan and the stock purchase were already completed before you entered into this long transaction of loans?

Mr. MEESE. Right; but I should point out that the bridge loan was simply to get us over the period of time between when we purchased the Virginia house and sold the San Diego home.

Senator DECONCINI. Was that after you had borrowed the money from Mr. Thomas and made the stock purchase?

Mr. MEESE. Yes; that had been a month or so, or actually the arrangements were quite a while before, and that loan had taken place a month before we got into the housing transaction.

Senator DECONCINI. When you made the bridge loan and had started the negotiations or were in the process of borrowing the money for the first mortgage on the Virginia house, was the consideration of doing that after you had secured the loan and made the purchase of the stock?

Mr. MEESE. Yes, sir.

Senator DECONCINI. Now, in the letter you wrote to Chairman Thurmond, dated February 29, 1984, you stated, and I quote, "This mortgage was purchased by the San Diego Federal Savings and Loan at par on April 2, 1981. And I have continuously paid my mortgage payments to San Diego Federal Savings & Loan—now Great American Savings & Loan—since that time."

Now, it seems as though that is not correct—at least with the records I have before me. You were in fact delinquent in that loan. What made you write that statement to the chairman? Had you forgotten? Or what happened?

Mr. MEESE. No, Senator. The lending institution had deferred the payments on the home in San Diego because they felt it would sell, and they deferred it while it was still on the market. And we did go ahead and pay—there were some months we were a little bit behind, but we ultimately made those up. So we did pay all of the payments on our Virginia home, and they were current, of course, at the time that I wrote that letter.

Furthermore, I had taken the payments on the home in San Diego and had amassed them into a new mortgage so that they would be paid up to date.

Senator DECONCINI. Well, you had missed a number of payments on that loan in 1981.

Mr. MEESE. Which loan, Senator?

Senator DECONCINI. The loan on the Virginia property.

Mr Meese. We had missed them for some months and then we made them up. So that they were all paid up by the end of the year.

Senator DECONCINI. Yes, you made them up in December 1981.

Mr. MEESE. Right. So what I meant was that I had continued to make payments over a period of time; that is what I meant by the statement.

Senator DECONCINI. You are saying that you were not talking about being current on a monthly basis?

Mr. MEESE. No, but that I had continued to make payments. And as a matter of fact, at the time that I wrote that letter we had been on a monthly basis—I guess from the beginning of 1982 we were current on a monthly basis.

Senator DECONCINI. Well, the records show that you missed the January 1 payment, the February payment, of 1982, March payment of 1982.

Mr. MEESE. They were rolled into that loan, I believe. I believe they were rolled into the second mortgage.

Senator DECONCINI. In other words, no payments were due on the $150,000 Virginia home loan in January 1982 through April of 1982?

Mr. MEESE. It was due, but I think we made it up by incorporating all three of those payments into, I believe, the $21,000 new mortgage on the property in San Diego.

Senator DECONCINI. That was obtained in May 1982.

Mr. MEESE. But it started in April that we started those negotiations.

Senator DECONCINI. But in fact you did not make the payments in January, February, March, and April. For the record, I want to be sure.

Mr. MEESE. Yes; didn't make them until we made them with that May note.

Senator DECONCINI. You paid the back payments with this new $21,000 loan. Is that correct?

Mr. MEESE. Yes, sir. That's correct.

Senator DECONCINI. Another thing that has troubled me concerns the sale of your home. Mr. Barrack, contributed a total of more than $83,000 toward the purchase of your La Mesa home. Did he, in your judgment, just make a bad business judgment? Or, in fact, was he doing this as a friend? Was he doing this to help Mr. Meese and his family because of the need to move, the need to educate children, the need to find new mortgages, to finance the purchase of the new home? What was the reason that Mr. Barrack would make such an investment? Apparently he's a pretty good businessman, but he didn't make a good business judgment. I just want to know for the record.

Mr. MEESE. Well, Senator, as the independent counsel found, I didn't know anything about his investment in that property myself until the time of the confirmation hearings last year.

Senator DECONCINI. He did not disclose——

Mr. MEESE. At no time did he ever disclose that, and I didn't know about it until he appeared before this committee and testified to that effect——

Senator DECONCINI. But you knew him.

Mr. MEESE. I knew him, period.

Senator DECONCINI. And quite well.

Mr. MEESE. I knew him as a friend. I wouldn't say that I knew him quite well. I knew him well, in the sense that we had been together socially in the course of our knowing him maybe a dozen or a dozen and a half times.

Senator DECONCINI. Was that before the loan or after the loan?

Mr. MEESE. No. Before—well, are you talking now about——

Senator DECONCINI. Excuse me, before the sale of the La Mesa home.

Mr. MEESE. I had never met him before the sale of the La Mesa home.

Senator DECONCINI. You had never met him before?

Mr. MEESE. No. He was a good friend of mutual friends, Mr. James. And Mr. James asked him, since he was in the real estate and land development business, if he knew of anyone who might want to buy our house. So that's all set forth in the Independent Counsel report.

Mr. Barrack did, in fact, find someone who was interested in buying the house, Mr. Howard, again as revealed in the report, and that's the way the transaction took place.

To my knowledge at that time and up until the confirmation hearings of last March, all I knew was that Mr. Barrack had found Mr. Howard. Mr. Howard had purchased the house. And that was the end of the transaction as far as I knew.

Senator DECONCINI. Your relationship with Mr. Barrack all occurred after that.

Mr. MEESE. After that, yes, sir.

Senator DECONCINI. After that purchase.

Mr. MEESE. Yes. He moved to Washington in, well, we stayed at his ranch, as the report shows, in November 1982. He moved to Washington later on—I guess the early part of 1983. We were at his home on maybe three or four occasions. He was at our home probably five or six occasions.

Senator DECONCINI. Yes. Mr. Meese, the reason I raise these questions, is because they trouble me. I cannot say that I am satisfied with your answers, although, I have no particular problem with them.

What it leads me to conclude is that indeed your reputation, rightfully or wrongfully, certainly has been scrutinized in the public eye. Scrutinized I like to think by all members of this committee, both Democrats and Republicans, for the purpose that we are charged with. I think you have responded in a most professional manner.

What troubles me is that out of all this, a certain image of Edwin Meese arises in the public. That image certainly is that you were involved in transactions, notwithstanding the Stein report, which involved friends, speculation, and failure to disclose. Although you might have good answers for them, and the Stein report certainly exonerates you from criminality, what do you do, Mr. Meese, as Attorney General, if you are confirmed? What do you do to overcome this image? What public steps will you take so that there will be confidence in that office? What personal steps do you take to avoid a lack of confidence other than your general statement that you're going to be very careful, you're going to scrutinize, and that you're going to judge yourself much more harshly or more critically and avoid even the appearance of any impropriety or what might appear imagewise to be damaging?

What is your plan to avoid this so we don't have this problem sometime in the future with Mr. Edwin Meese for someone who looks at you as a model of what an attorney general should be?

Mr. **Meese**. Senator, first as far as the general subject, I think that a fair reading of the facts, not just the conclusions which are of course on the criminal aspects, but the facts as deduced in the Independent Counsel report go a long ways toward dissuading anyone that there have been any ethical violations or that there is anything that was either intentionally or in any way carelessly wrong.

But nevertheless——

Senator **DeConcini**. Let me interrupt you just a minute. Let me tell you why I raised that question. I didn't ask for all this scrutiny about your loans, but it's all there. I've looked at it.

Looking at the report, you see loan after loan from organizations with which you have some friends and some relationship—I understand that. However, as to always waiving the monthly payments, it seems to me that if there is nothing unethical, there certainly is an image problem. Most Americans have to pay their mortgage payments. If they're lucky, maybe two or three will go by. Some may be fortunate like you and myself who know the banker, and can go down and say, well, can you put them off for a little bit longer. However, you have a history here, for obvious financial reasons, of not being able to pay.

What are you going to do when you're Attorney General? How are you going to overcome that image that I think the American public is going to have that this man doesn't have to pay his bills because he knows important people and he can get them waived? But I have to pay mine. What are you going to do to correct that? That's really my question.

Mr. **Meese**. I understand, Senator, and I think that's why, if I may just preface my answer by saying it's important to recognize from the Independent Counsel's report and from the facts, I always paid all of my obligations. Indeed, when payments were not made promptly because of the unusual financial circumstances relating to the inability to sell our house in San Diego—and that was really at the core of all of these problems that you referred to—then we did pay interest on interest by combining these payments into a new mortgage on which we continued to pay interest.

So in effect I paid some $43,000 to the Great American Savings and Loan and I paid over $23,000 to the John McKean Trustee as a means of solving our financial problems. So it was not as though I just somehow got off scot-free with not paying bills on the proper time.

Senator DECONCINI. I never indicated that.

Mr. MEESE. I just wanted——

Senator DECONCINI. I indicated that you had a long history of nonpayment. How do you overcome that in the future?

Mr. MEESE. I understand that. I just wanted to make clear by way of preface. As far as the future——

Senator DECONCINI. Excuse me. I didn't want to leave any inference that you didn't make the payments, because that's not true. The report is clear. My question is the longtime delinquency—how do you overcome that?

Mr. MEESE. Well, I think that as you would also learn from an examination of my financial affairs, that since the purchase of our house in San Diego the inability to make monthly payments has stopped. We are now paying on our home in McLean on a regular monthly basis, and have been for the past 2 years, or whatever it's been, since the house sold.

My financial affairs are in order so that we are not behind in our payments and the general course of conduct that was made necessary by circumstances at that time beyond our control has been corrected, and will be corrected as far as our personal financial affairs being in order is concerned.

In addition to that, we have gone through an extensive audit of all of our finances to make sure that all the records are properly up to date and so on during the course of the last several months.

In addition to that, we are taking every possible precaution to be sure that there is no basis for any concern about financial affairs. We do not engage in speculative stocks of any sort. We are very—what I would call—conservative in all of our financial dealings.

So this is one step that would be taken. If you would like me to go on——

Senator DECONCINI. Let me ask you this question: Do you have plans on an annual basis, as Attorney General, to make detailed financial statements—more than is required by the disclosure act—to help overcome this problem?

Mr. MEESE. I would be happy to make any——

Senator DECONCINI. I'm just trying to find a way, quite frankly, for you and for this country. Because if you're confirmed you will be one of the most recognized public officials in this country and looked to as a leader of the law enforcement agency.

And it troubles me that people are going to say, well, he got away with it once. He's OK now, or is he? I just want to know if you have some thoughts on what you're going to do.

I'm not going to ask you to do it. I just want to know how you look at this particular problem.

Mr. MEESE. Well, Senator, first of all, I don't see what it is I got away with, because I didn't get away with anything.

Senator DECONCINI. Well, no, I don't mean that in the wrong sense, Mr. Meese. If I don't have to pay a mortgage payment for 11 months, I got away with something that most people don't.

Mr. MEESE. No, that was——

Senator DECONCINI. I made them up because I got in a hole financially. But you get a good deal when you don't have to make your mortgage payments, for whatever good, justifiable reason there is. A lot of people don't get that good deal.

Mr. **Meese**. Senator, that arrangement to defer the mortgage payments on our San Diego home was specifically agreed to by the savings and loan because they thought that our house would sell, as did we. And so they said that we would not have to pay any mortgage payments until the house sold, at which time they would collect out of the proceeds of the sale.

I'm not trying to argue with you on the point. I recognize the point you're making. I just don't want to leave unanswered the inference that somehow I got some benefit that would be out of proportion to the good business judgment that the savings and loan was using at this time. Because, as I mentioned, they got every cent of their money, and they got interest on interest because of our financial difficulties.

Now, as far as what I would do in the future, as I say, would be maintaining our finances on a current basis. We are not in the position where we have to sell a home or buy a home or have a home for sale, and so we would not be in similar circumstances—nor have we been during the last 2 years.

Senator **DeConcini**. You don't have any specific plan, then, to see that at least Mr. Meese, as Attorney General, is going to be able to have the public perceive and realize that you are current on your mortgages, that whatever happened was explained in the Stein report, and justified at the hearings, and is not continuing now. You don't have any plan that you're going to take up——

Mr. **Meese**. That's correct.

Senator **DeConcini**. Except by following whatever is necessary under the disclosure laws. Is that safe to say?

Mr. Meese Well, the disclosure laws, Senator, reveal virtually everything in our financial picture, with the exception of our home mortgage. Because it just happens that the nature of our financial transactions are so limited that they're almost all revealed, except for the home mortgage, which is specifically exempted.

Senator **DeConcini**. Mr. Meese, I take it you're not overly concerned about what has happened to you—unjustified as it may be or justified as it may be—and to what the image is going to be of the Attorney General. Having gone through this, I'm sure you consider it a horrible experience.

Mr. **Meese**. I'm very concerned, Senator, and I would do everything possible to make sure that that image does not continue.

Senator **DeConcini**. What are you going to do? Obviously you've given it some thought.

Mr. **Meese**. I have.

Senator **DeConcini**. Maybe you're going to do nothing except what you have to do. That's really what I want to know.

Mr. **Meese**. Well, the financial disclosure form in itself is a full revelation of our financial picture in our family.

Senator **DeConcini**. All right. You're telling me that what you're going to do is fulfill the requirements of the financial form to the best of your knowledge.

Mr. **Meese**. Right.

Senator **DeConcini**. And that's it.

Mr. MEESE. Well, if there's anything else that you feel would make you more confident of my situation, I'm open to suggestions But right now, it seems to me——

Senator DECONCINI. Well, I could make plenty of suggestions, but that really isn't my point. My point is what does Ed Meese think about it? How does he overcome the unfairness that you've been through, if you consider some of it unfair, and I'm sure you do? How do you overcome that, other than just complying with the minimum or the maximum however you look at it. Are you going to do anything more for Mr. Meese? I ask you that because I want to know how you think about these problems and about the image that you're going to have to set as the Attorney General relating to financial dealings.

Mr. MEESE. Well, Senator, first of all, the financial dealings are so minimal that we would be involved in that most of them are revealed on the financial disclosure form. The only thing that I can think of that would not be would be the fact of our mortgage payments, since that by law is specifically excluded.

I would have no hesitation to make that information available, for example, to the Office of Professional Responsibility, the people who would be counseling on my ethical responsibilities within the Department. I would have no problem with that.

Senator DECONCINI. Mr. Meese, let me make clear, I'm not suggesting that you have to do that, or do some other thing. I just hope that you think about it.

Mr. MEESE. Senator, I have thought about it a great deal, and in a number of other areas relating to avoiding conflicts of interest or avoiding any appearance of impropriety, or avoiding anything that might be misconstrued, as I mentioned earlier to Senator Biden, I believe. I have thought a great deal about that, and I think you will find that my conduct of the office will be such, if I am confirmed by the Senate, that there would be no reason for any questions, let alone any suggestion or misconstruction or misunderstanding of my affairs, either professionally or personally.

The CHAIRMAN. Senator, your time is up.

Senator DECONCINI. Fine. Mr. Chairman, I yield. I'll have other questions later. Thank you. Thank you, Mr. Meese.

The CHAIRMAN. The distinguished Senator from Wyoming.

Senator SIMPSON. Thank you, Mr. Chairman.

I have a thought on the issue that Senator DeConcini is addressing. You asked for the opinion—and I have one. You could make an automatic deposit from your Government check to the savings and loan to make your monthly house payment. Did you ever stop to think of that? You could do that.

Would that resolve your problem?

Senator DECONCINI. Well, if the Senator would yield, seeing that he's posing a question here. As I indicated to Mr. Meese, I'm not suggesting that he do that. What I'm suggesting is that I hope Mr. Meese is thinking about ways to approach his professionalism, in this job, in a manner that will enhance that office and Mr. Meese, because of the experience he has had to go through, because of the Stein Report, because of accusations, wrong or right. That's all I'm asking. I could make a lot of suggestions. If you want some, I'll be glad to give them to you.

Senator SIMPSON. Well, Mr. Chairman, I came in to hear some of that inquiry, and it seemed to devolve on, what did this man get away with? These people loaned him money and I think I know what is it the American people do understand about that.

I think that the majority of fair minded American people might understand that this couple got in a pinch, just like a lot of people do, when they come to this curious arena. So in the pinch he fell behind 11 months, and then he paid interest on interest, and I have never been able to determine where the good deal was here. I have heard the good deal referred to, and the taking advantage, and being in the high echelons of power and thus receiving favors or things that others do not get. But this guy paid through the nose. There isn't one of us here that wouldn't want to loan him money.

He really pays interest.

Senator BIDEN. If the Senator would yield, where the good deal might be is it's better to have had pay the interest than lose the house. That's called a good deal. Where I come from you lose your house. That's a bad deal.

Senator SIMPSON. I agree with that, Joe. You're right. But somewhere in it let's sort out how much this gentleman and his family paid in interest. They paid a lot of it—a lot more than the rest of us would have done under the same situation. Like $66,000. I'd just like to toss that in.

Now, back to more mundane things. One of the things we have discussed in the Judiciary Committee and we've worked on—Senator Leahy has been involved in it—is in regard to venue and the race to the courthouse and that type of thing. I wanted to ask you a brief question about your feelings on that type of legislation. It concerns have the litigation take place in the general geographical area where the substantial interest of the parties is involved, and avoiding the race to the courthouse, which is often right here in the District of Columbia.

How do you feel about that kind of legislation?

Mr. MEESE. Senator, I think that legislation should provide for the locus of the trial or the litigation to take place, where the substantial interests are of at least one of the parties, if not both of the parties. I think the idea of legislation which fixes a particular Federal district as the only place where the lawsuit is commenced and tried is probably not desirable, because it forces a great deal of inconvenience on the litigants themselves, or at least usually on one party to the litigation.

The Government, of course, is located right here. It's the other parties that usually have to face the inconvenience and often the deprivation by such legislation.

Senator SIMPSON. Let me ask you a question. Your predecessor has become very active with regard to international drug traffick and is interested in closing off certain routes of supply to this country. What is your feeling about the emphasis with regard to drug traffick and international choking off of those routes through your auspices?

Mr. MEESE. Senator, it would be one of the top priorities that I would, if confirmed, bring to the Justice Department. I think that the interdiction of illegal drug trafficking, the importation of illegal drugs into this country is the number one law enforcement problem.

This was found by the Attorney General's task force in 1981 that that was one of the major contributing causes to violent crime in America. I would continue to utilize all the resources of the Federal Government that might be available in this interdiction program. Indeed, I was one of the architects of the program that's presently in use.

Senator SIMPSON. Just two more questions, and that will conclude my activity here.

Over these past 4 years it has been a very distinct pleasure to work with William French Smith on the subject of immigration reform, and certainly working in a bipartisan way as we have done in the House and Senate, and now we will be making another attempt to see if we can't resolve that issue.

The Attorney General, your predecessor, did make that one of the administration's, or the Department's top law enforcement priorities. What type of commitment will you make from the Justice Department with regard to that issue of immigration reform?

Mr. MEESE. Senator, it is a major problem. I would be interested in continuing the efforts that the Justice Department has initiated and would also be interested on behalf of the administration and with others in the administration in working with the Congress on sensible, nondiscriminatory immigration reform.

Senator SIMPSON. You think that is a priority in this country?

Mr. MEESE. Yes; it is. I think it will continue to be an increasing problem and, therefore, a continuing priority.

Senator SIMPSON. As we deal with that one and as we get into it again, what priority will you be giving the Immigration and Naturalization Service within the Justice Department toward enforcing existing laws and providing proper service? We find that in the Immigration and Naturalization Service, that the word "service," at least prior to Commissioner Alan Nelson, fell into disrepair, and he is trying to get that restored. But I am interested in how you feel about enforcement of existing laws and rendering the services necessary through that agency.

Mr. MEESE. Senator, it's my understanding that Commissioner Nelson has done a great deal to upgrade and improve and modernize the Immigration and Naturalization Service. It would be my purpose, if confirmed, to support him in those efforts, to be sure that adequate resources were there, and to continue strong support of the enforcement effort, as well as the service aspects of that particular branch of the Justice Department.

It is a large and very important part of the Department, as far as I'm concerned.

Senator SIMPSON. Well, I thank you, and I do concur that Commissioner Nelson has been remarkable in his willingness to address any group on the issue of immigration reform and how to best make the Immigration and Naturalization Service perform its duties.

I just wanted to be sure that you had that same commitment.

Mr. MEESE. Yes; I do.

Senator SIMPSON. I thank you very much.

Thank you, Mr. Chairman.

The **Chairman**. Thank you, very much.

The distinguished Senator from Vermont, Mr. Leahy.

Senator **Leahy**. Thank you, Mr Chairman.

To follow up on something that Senator Simpson had asked: Has the drug enforcement program been successful would you say?

Mr. **Meese**. Senator, I think the program has enjoyed some success. There's still a long ways to go and a lot that has to be done, but I think we are making some initial successes. I think the successes come in several ways: One is that we are being more successful in the interdiction effort.

Senator **Leahy**. Let's just take that one point. Has there then been a significant diminution in the drugs being brought, illicit drugs being brought into this country during the past 4 years?

Mr. **Meese**. It's hard to measure that, because what has happened is increased efforts have been made to bring those drugs in because of the interdiction efforts. But I think that there have been larger seizures of drugs, and a much greater effort has been made to prevent drugs coming in.

There are some indications that there has been a limitation on the amount of drugs available. This varies from time to time based upon the efforts of the drug traffickers.

Senator **Leahy**. Does DEA, for example, think that there has been any significant drop in the amount of heroin available in this country during the last 4 years?

Mr. **Meese**. It's my understanding that they do feel that there have been some strides made.

Senator **Leahy**. But not a significant drop?

Mr. **Meese**. Well, it's hard to say what is significant. I think that again——

Senator **Leahy**. 20 percent?

Mr. **Meese**. Well, I'm not sure exactly what the amount is, and I don't think there's any way you can really measure this because this is not the kind of thing that passes through customs and measure the amount coming in, obviously.

Senator **Leahy**. I understand. But we use measurements all the time I mean, you see a drug seizure, and somebody says, well this is worth $849 zillion at the street level. Our agent bought it for $10,000—of course, he bought it at the source—but at the street level it would be such and such. We make measurements all the time, do we not?

Mr. **Meese**. Well, those measurements are up—the amount of seizures are definitely up.

May I also mention one other measurement, I think, of success. And that is we have a greater amount of resources being utilized than ever before, and I think our success has been in mobilizing and coordinating the resources of the Federal Government, which at one time were much more fragmented and scattered than they are at the present time.

Senator **Leahy**. Have you been able to convince the Secretary of Defense that he ought to take some of his planes off of training missions and use them to interdict drugs coming in from Central America?

Mr. **Meese**. Yes, Senator, we've been very successful in that. And some of the training missions are consistent with the drug activities as well.

Senator **Leahy**. Is the Justice Department getting all the cooperation they want from the Department of Defense?

Mr. **Meese**. That's a value-loaded question, Senator, because I think you can always use more help. But I am confident——

Senator **Leahy**. Mr. Meese, let me be serious on the question. I'm sure you can count the numbers. You know that after our advice and consent you're in all likelihood going to be sworn in as Attorney General. So you're going to have to make this determination at some point.

You're going to be up here testifying as DEA now does. Is the Justice Department getting all the cooperation from the Department of Defense to stop the illicit flow of drugs into this country that it wants? Yes, or no. A simple question.

Mr. **Meese**. It's my understanding—and I'm not privy to what the Department's feelings are on a day to day, or even month to month basis—but it's my understanding that the Department is getting good cooperation from the Department of Defense. It would also be my purpose to try to work with the Secretary of Defense to see if more resources couldn't be directed toward this purpose.

Senator **Leahy**. Do you have an understanding of whether the Department of Justice is satisfied with the degree of cooperation it is getting from the Department of Defense in trying to interdict the flow of drugs into the United States?

Mr. **Meese**. Senator, I do not know what judgment they would make on that. I am informed that they are getting good cooperation, but I think that there could be more activities in certain areas. And I would make it my purpose to accomplish that.

Senator **Leahy**. You're not aware of any complaints by high officials in either DEA or the Department of Justice that they have not gotten adequate cooperation from the Department of Defense?

Mr. **Meese**. No, sir. I am not aware of any such complaints. But I do think there are more things that could be done.

Senator **Leahy**. Oh, I do, too. I wouldn't ask the questions if I didn't. Now, just to go back to one question you were asked by one of the Senators involving the activities of Mr. McKean, and if you would, you do otherwise today. This followed along the lines of what both Senator Metzenbaum and Senator DeConcini asked you. And you said something to the effect that you would bend over backward or do something appropriate in another case like that of Mr. McKean. I believe the time ran out at that point.

What would be the type of things you would consider appropriate in that McKean situation, if it came up again?

Mr. **Meese**. Well, I would, if such a situation happened in the future, for example, it's unlikely that I would have any official act that in any way related to or was any way involved with anyone with whom I had financial dealings. But I would take care to recuse myself if that was the appropriate thing, as I have indicated in my letter, or otherwise take appropriate steps so that no one could misinterpret even appearances.

Senator **LEAHY**. Now, do you recall a conversation between yourself and Peter McPherson early in December 1980 about moving expenses?

Mr. **MEESE**. I do not recall the conversation. But I read about that in the Independent Counsel's report—that such a conversation may have taken place.

I have no reason to believe it didn't.

Senator **LEAHY**. Are you aware that Mr. McPherson told the Independent Counsel in early December 1980 he was told by you that money was needed to pay the moving expenses of people coming from California to Washington to work in the Government?

Mr. **MEESE**. Yes, I read that. I know that I received information on the subject from someone, and it probably was Peter McPherson. I just don't have the distinct recollection of that.

Senator **LEAHY**. Are you aware that Mr. McPherson asked an attorney to look into the expense issue?

Mr. **MEESE**. Yes.

Senator **LEAHY**. Do you know who that attorney was?

Mr. **MEESE**. No. I believe it's revealed in the independent counsel's report I just don't recall who it is right now.

Senator **LEAHY**. If the independent counsel report said Roger Yurchuck, would that seem right to you?

Mr. **MEESE**. That sounds correct to me.

Senator **LEAHY**. Are you aware that Mr. McPherson was advised by counsel that there were legal problems in the moving expense payment?

Mr. **MEESE**. Yes.

Senator **LEAHY**. Are you aware that Mr. McPherson told the independent counsel that he told you of this legal opinion?

Mr. **MEESE**. Yes.

Senator **LEAHY**. Do you know if Mr. McPherson told the independent counsel that he then contacted the Office of Legal Counsel on the moving expense question?

Mr. **MEESE**. I've read that in the independent counsel report. Yes, sir.

Senator **LEAHY**. Do you recall what the Office of Legal Counsel's opinion was?

Mr. **MEESE**. From the report of the independent counsel, I know it, yes.

Senator **LEAHY**. Is that the only way you know it?

Mr. **MEESE**. Yes, sir; I don't recall that I received that information at the time, but I probably did—or I may have.

Senator **LEAHY**. You're aware that Mr. McPherson told the independent counsel that he advised you of the OLC opinion in December 1980?

Mr. **MEESE**. Yes.

Senator **LEAHY**. Do you recall him advising you?

Mr. **MEESE**. I don't recall him advising, but I recall someone advising me that there could be a problem with receiving moving expenses.

Senator **LEAHY**. But you don't recall who that was?

Mr. **MEESE**. I don't recall specifically who it was. No, sir.

Senator **Leahy**. Are you aware that the OLC said it would consider the payment of moving expenses to be a violation of Federal criminal law?

Mr. **Meese**. I read that in the independent counsel's report, yes.

Senator **Leahy**. Is that the only place you heard that?

Mr. **Meese**. Well, in the course of the independent counsel's inquiry, I learned it during that period of time also, although as you'll notice in the report the independent counsel tends to disagree with that conclusion.

Senator **Leahy**. You told the independent counsel you had no recollection of any of these conversations with Mr. McPherson?

Mr. **Meese**. That's correct. But I also told him that I had heard from someone that there might be a legal problem, and because I didn't want to have even a legal question I took other action.

Senator **Leahy**. Did you testify that you have no recollection of two conversations with Mr. Deaver about moving expenses during the transition?

Mr. **Meese**. I don't have a specific recollection, but it may well have happened.

Senator **Leahy**. But you do recall that when you learned of these problems that you asked Ms. Van Damm to change the records of the Trust to reflect the payment to you was for consulting services, not the moving expenses?

Mr. **Meese**. I didn't ask her to change the records per se. What I did was say that I could not accept moving expenses, because I felt I didn't want to even have a question about it. And that, therefore, the only way in which I would accept any money from the Transition Trust Fund was on the basis that it would be for compensation for services rendered—in other words, consulting fees.

Senator **Leahy**. But at that point you already had the money anyway. I mean, you had received the money.

Mr. **Meese**. I had the money.

Senator **Leahy**. You had received the money for moving expenses?

Mr. **Meese**. I had received the money in a check that was marked moving expenses, yes.

Senator **Leahy**. So what you did was say I've got the check here. By the way, presto, change-o, it's no longer moving expense money, it's consulting fee.

Mr. **Meese**. No; as the independent counsel found I was entitled to be compensated; had I not been entitled to be compensated, I would have returned the money. But under the circumstances, I felt I was entitled to be compensated. There was money available, and so I agreed to accept the money only on the basis that it was clearly understood it was for consulting fees.

I therefore asked them to change their records to show the appropriate basis on which I had received the money. That was done to the best of my knowledge. I received an income tax form, a 1099 indicating that it was compensation for fees. I reported that on my income tax and paid taxes on it accordingly.

Senator **Leahy**. Now, in retrospect, how would you describe that procedure? Lawyerlike? Or sloppy? Or take any other choice you want.

Mr. **Meese**. I would say that it was lawyerlike. But probably I would have a memorandum in the file now to memorialize it. It would probably be an additional step in the light of what I know now.

At the time, in the very hectic period of the transition, I did what I felt was legally and ethically necessary to make sure that it was consulting fees. And my records show it appropriately.

Senator **Leahy**. Well, Mr. Meese, you testified today that it was lawyerlike, but you go back now and find that the legal advice of what you would do would be criminal until you changed it. You really call that lawyerlike? I mean, calling it moving expenses. Do you really call that lawyerlike?

Mr. **Meese**. Well, Senator, at the time that I received it I had no idea that there was anything wrong with it. And it wasn't until I mentioned it in line with—as a matter of fact, first of all, it probably is not illegal; the independent counsel in his report disagrees with the conclusion of the Office of Legal Counsel of the Department of Justice. And up until 1978 the Office of Legal Counsel had a very different opinion of it.

Nevertheless, as soon as I found there was even a question, my lawyerlike instincts were that I would not accept the money——

Senator **Leahy**. But you had already accepted it.

Mr. **Meese**. Well, I received the check and cashed the check before I had any inkling from anyone that there was anything wrong with taking the money even for moving expenses.

Senator **Leahy**. Now, how did you first find that at least someone—you disagree with the legal opinion—but that someone felt that it was improper?

Mr. **Meese**. Some time—I believe it was in December. And I think that's what Mr. McPherson has testified to, according to the independent counsel's report, I raised the question with him apparently. And I think it was in conjunction with paying the moving expenses of other people. He said that there might be an issue and looked into it. And it was as soon as he told me that that I indicated to the people in the transition trust that I would not accept moving expenses. At that time it was only a question, when I first heard about it.

Senator **Leahy**. But what you did was you didn't return the money. You had them change the records?

Mr. **Meese**. No; I changed the basis on which I accepted the money, which was that it would be accepted only as compensation consulting fees for services rendered. And then the records were changed to reflect properly the basis on which I received the money.

Senator **Leahy**. But the money was never returned, the basis was changed, and the record was changed.

Mr. **Meese**. That's correct.

Senator **Leahy**. We deal with questions of appearances here, and I am sure the issue bothers people in different ways. Every single member of this committee at one time or another has spoken about the appearance of somebody's actions, or people in public life have expressed their concerns one way or the other about the appearance of certain actions. So that it is an appropriate thing to raise.

Let me ask you a question that was raised to me during an editorial board meeting with a newspaper in our State, a newspaper—like virtually every newspaper in the State, extremely favorable to you and the administration. I do represent—without being at all partisan about it—probably the most Republican State in the Nation. So that it surprised me, the question that was raised.

And I'll repeat it because I did not have an answer, but I told him I would raise the question and let your answer stand.

The question that was raised to me was was there anybody who had either given loans or significant financial aid to you and your family since you came to Washington who wasn't subsequently either offered or received a Federal job. That's a serious question. I don't ask it lightly. The person who suggested it to me I don't think did. How would you respond?

Mr. MEESE. I would respond, yes.

Senator LEAHY. Who?

Mr. MEESE. The person with whom I had all of my dealings at the Great American Savings & Loan, the president of that institution, Mr. Schmidt.

Senator LEAHY. So you dealt just with him? You didn't deal with anybody else at that——

Mr. MEESE. Oh, I dealt with other people. There are other people who didn't receive Federal jobs that are still there at Great American Savings & Loan. All of the people who did get jobs I never dealt with.

Senator LEAHY. You never dealt with Mr. McKean?

Mr. MEESE. I never dealt financially with anyone from Great American Savings & Loan who got a Federal job.

Senator LEAHY. You never dealt with Mr. McKean?

Mr. MEESE. No; he wasn't at Great American Savings & Loan.

Senator Leahy No; I'm talking about anybody. Either—there are a lot of people that helped in other ways. Not just that. I mean, the man who bought your home, there's the——

Mr. MEESE. Mr. Howard did not get a Federal job. As I say, several people at Great American Savings & Loan—as a matter of fact, no one who got a job ever got the job in relation to any financial transaction, and the only person with whom I had a financial transaction who did get a job totally separate from that was Mr. McKean.

Senator LEAHY. Mr. Chairman, how much more time do I have?

The CHAIRMAN. You have about 8 more minutes, but you don't have to take it.

Senator LEAHY. You're very generous, Mr. Chairman. Thank you. I'm sorry, Mr. Meese——

Mr. MEESE. Sir, I should correct, Mr. Thomas also might be put in that category. So there would be only two people with whom I had financial transactions.

Senator LEAHY. Mr. Meese, do you recall in the Stein report Mr. Barrack states that he visited your office on September 8, 1982?

Mr. MEESE. Yes; I noticed that in the Stein report.

Senator LEAHY. You recollect that visit?

Mr. MEESE. No; I do not. Nor, for that matter, did Mr. Barrack recall it when he testified before this committee.

Senator LEAHY. So, do you recall that in that report he said he wrote you a note saying again I'm very grateful for your counsel and encouragement. If I may be of any aid or assistance, please call on me.

Mr. MEESE. Yes.

Senator LEAHY. You recall he said that?

Mr. MEESE. Yes.

Senator LEAHY. Do you ever recall getting such a note from him?

Mr. MEESE. I don't recall ever receiving such a note. It's entirely possible I did.

Senator LEAHY. Did you ever find such a letter in your file?

Mr. MEESE. No, sir, I have not.

Senator LEAHY. According to the Stein report, let me just read out of it, it said that "Mr. Barrack did not recall this meeting until he was shown a copy of a note he had written Mr. Meese on September 8, 1982. In the note Mr. Barrack thanked Mr. Meese for his courtesy and kindness in taking time from your hectic schedule to meet with me this morning." And it goes on.

Mr. MEESE. I would have to find out, by the way, whether a note was found in the course of the independent counsel's investigation. It could have been in my files. I just don't recall that it was there.

Senator LEAHY. Would you think that it would be difficult to forget somebody like that, somebody who is trying to sell your house, considering the length of time it had been on the market?

Mr. MEESE. It would not be difficult—I mean it would not be easy to forget a person like that. I just don't recall this meeting. From what we can reconstruct, and again the independent counsel's report is helpful but not conclusive on this, because it appears that he was visiting someone else in the White House and just dropped into my office. There is no record of any meeting. He was not on my schedule, and so apparently he just dropped into the office briefly. I met him, and he left.

Senator LEAHY. A personal note like that you wouldn't necessarily remember?

Mr. MEESE. Well, Senator, I meet as many as 50 to 100 people a day, and so it's entirely possible that I would not recall that.

Senator LEAHY. OK.

Mr. MEESE. I do recall very vividly other meetings with him sometime later in November.

Senator LEAHY. Do you recall a letter of October 27, 1982, from Pendleton James, the Cabinet Secretary, recommending Mr. Barrack, and referring to your support for him?

Mr. MEESE. I recall the letter from the independent counsel's report. I don't have an independent recollection of that. And as the independent counsel's report states, there's a question of whether I ever received or read it.

Senator LEAHY. Even though a copy was sent to you with a cover note to you from Mr. James?

Mr. MEESE. A copy was sent to me apparently from Mr. James. It's entirely possible I did not see the letter. The way it was handled in the office reveals that an information copy was sent to me. I never responded to it, nor did anyone else in my office.

Senator LEAHY. And so you don't recall knowing if Mr. Barrack was interested in a Federal position?

Mr. **Meese**. That's correct.

Senator **Leahy**. According to the Stein report, you have little or no recollection of what you discussed at the November 9, 1982, dinner with Mr. Barrack?

Mr. **Meese**. It was totally a social dinner, and I don't recall what was discussed, but I think it was mostly about our families, learning about his family and he learned about our family. It was strictly a social dinner, and I believe the independent counsel's report brings out the fact that he himself avoided mentioning anything about him being interested in Federal employment.

Senator **Leahy**. So you're certain there was no discussion of Mr. Barrack's interest in a position in the administration?

Mr. **Meese**. To the best of my recollection, there was not.

Senator **Leahy**. At at no time did you ever talk with Mr. Barrack, at that time or any other time, of an interest in going with the administration?

Mr. **Meese**. Not to my knowledge or recollection. I think the independent counsel again finds that at no time did I do anything relating to helping him secure employment.

Senator **Leahy**. So why would Pendleton James refer to your support for Mr. Barrack?

Mr. **Meese**. He didn't. I believe the letter quotes him as saying: "Ed Meese knows him and would probably be favorable toward him" or words to that effect.

Senator **Leahy**. Suppose you had seen such a note. What would you have done?

Mr. **Meese**. I would have read it. But the letter did not ask me to do anything, nor did it suggest that I would. If someone had contacted me about Mr. Barrack, I would have told him what I knew about him.

Senator **Leahy**. Well, we're running too close in time to go into a major area, but you know you talked about Mr. Schmidt whom you met with. There were, of course, were there not, appointments, Federal appointments to Gordon Luce, Edmond Gray, Mark Sandstrom, and Clarence Pendleton?

Mr. **Meese**. Yes; but none of them had anything to do with our housing transaction.

Senator **Leahy**. And you didn't know any of them?

Mr. **Meese**. I know all of them. I knew them in Sacramento.

Senator **Leahy**. But none of them directly or indirectly dealt with what you were doing?

Mr. **Meese**. That's correct. In terms of our housing transaction.

Senator **Leahy**. Did Mr. Schmidt recommend any of them to you for Federal jobs?

Mr. **Meese**. No; they all, all of these people were well known, with the exception of Mr. Pendleton and he was recommended through Mr. Bradley in the White House. All three of those other people were well known to former Governor and now President Reagan. They had all worked for him in Sacramento. And Mr. Gray had worked in his campaign.

Senator **Leahy**. Do you accept what they say in the Office of Government Ethics that Mr. Meese violated the standards, at page 2, "Mr. Meese violated the standards of conduct or other applicable statutes first with respect to the loan Mr. Meese received from his accountant, Mr. McKean. Our examination reveals three ethics violations" and then goes on. Do you agree with them on that?

Mr. **Meese**. I haven't seen that document, Senator. But I suspect that was the working paper opinion of the lower level staff person, which was specifically not determined after all the facts were known by the head of the office.

Senator **Leahy**. I'm sorry. I had assumed that you had seen this. I tell you what, I'll withhold that question for the next go around which won't be today. And that will give you a chance to see it. I don't think it's fair to ask you the questions if you haven't read it.

Senator **Metzenbaum**. Mr. Chairman, before we break up, it's my understanding that copies of the Office of Government Ethics staff report have been prepared, but some of them are available. I don't know how many. I don't know that we've gotten them from downtown as yet.

Mr. **Short**. We do have them. That's what has just been distributed.

Senator **Metzenbaum**. I would like to suggest to the investigator, Mr. Short, that there also be made available the cover letter that you received yesterday, dated January 28, as well as the letter that was addressed to you and Senator Biden, dated January 29.

The **Chairman**. We have no objection to that.

We'll disclose everything.

We have reached a point now where we are going to continue the hearings tomorrow. And, Mr. Meese, I want to congratulate you upon the dignified and restrained manner and the frank manner in which you've answered your questions today.

I think you've acquitted yourself well. And we will continue tomorrow. I would ask you to be back at 9:30 tomorrow morning, at which time this hearing will continue.

Mr. **Meese**. Thank you, Mr. Chairman.

The **Chairman**. We now stand adjourned until then.

[Whereupon, at 6:08 p.m. the committee adjourned, to reconvene at 9:30 a.m., Wednesday, January 30, 1985.]

CONFIRMATION OF EDWIN MEESE III

WEDNESDAY, JANUARY 30, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to recess, at 9:32 a.m., in Room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Metzenbaum, Heflin, Baucus, Laxalt, Mathias, Hatch, Grassley, Specter, Leahy, and DeConcini.

Staff present: Duke Short, chief investigator; Joseph Kopka and Frank S. Klonoski, investigators; Ruth E. Lucas, investigative clerk; and Mark H. Gitenstein, chief minority counsel.

The CHAIRMAN. The committee will come to order.

Mr. Meese will take the table again. Mr. Meese, I wish to remind you that you are still under oath today; it will be unnecessary to administer another oath.

Mr. MEESE. Thank you, Mr. Chairman.

The CHAIRMAN. I believe our first Senator to question this morning is the distinguished Senator from Iowa, Mr. Grassley.

Senator Grassley?

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. Mr. Chairman, I appreciate very much this opportunity to question. I probably will not use the full 20 minutes. I was not able to be here for all of the questioning yesterday, but have reviewed the testimony. What I would like to discuss today is somewhat different from the issues that were brought up yesterday. In my opening remarks yesterday I referred to discussions with Mr. Meese in my office about Congress' access to information, and I found Mr. Meese at that time very open and cooperative.

While understanding that he would have to be approved, sworn in and on the job before he could act on all the issues that I am concerned about, in a very general way I pursued some of these issues and explained the confrontations I had had with the Department of Justice.

And as I said yesterday, I feel like now there could be a new approach. In pursuit of some specific thoughts I had on access and other issues, I would like to at this point discuss these things with you, Mr. Meese, and have you respond with hopefully as much certainty as we did in our private discussion. Hopefully we can have on the record some indication that it is not going to be business as usual in the Department of Justice as far as access to information, and I mean constitutional access to information in our function of oversight and in our function of reviewing the need for rewriting legislation if it is not adequate.

We have had an opportunity to speak several times now about the issue of congressional access to Justice Department information. And, additionally, I have spoken to you about some of the specific access problems experienced by my Subcommittee on Administrative Practice and Procedure.

After our latest discussion Monday, I now feel that we have come to a satisfactory understanding on the general issue of access and how access requests would be handled under your direction.

I also feel confident that you and I anticipate a quick resolution regarding the subcommittee's request to certain information from the General Dynamics file. I would just like to clarify our understanding for the record and, as I told you on Monday, ask you to reaffirm what we discussed.

My understanding is that if confirmed as Attorney General, you will consider facilitation of congressional access a priority item; you will consider any disputed information request personally, and at that time expedite a negotiated arrangement whereby some form of access would be allowed.

Now, again, I am speaking generally, not just about the specific case I mentioned to you. That information that was agreed to be considered sensitive would be protected through the use of various mechanisms, and that all of this, would be subject to any statutory limitations, such as the rule protecting grand jury information.

Is that an accurate characterization of what your policy would be?

TESTIMONY OF EDWIN MEESE III, OF CALIFORNIA, TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. MEESE. Yes, Senator. I have a deep respect for your concern over the constitutional requirements on Congress and their ability to do their job, and that is a correct statement of what my commitment to you and to this committee would be.

Senator GRASSLEY. Yes; now, that is a general statement regarding access and I again appreciate your commitment to that. In regard to General Dynamics I have a further clarification still in line with what you and I previously discussed.

My understanding is that you would implement this type of access policy in regard to the subcommittee's request for access to certain listed documents relating to the initial General Dynamics investigation dating prior to its close in December 1981. And we agreed that the details of the access arrangements on those documents would be worked out between you and me or our staffs within 2 weeks of your assumption of the Attorney General's position. Will you do that?

Mr. MEESE. Yes, sir.

Senator GRASSLEY. I want to thank you for working with me on this issue and having the patience to hear me out. I also want to compliment you on coming forth on your own initiative to discuss further with me the concern that I had.

I look forward to what I hope is a dramatically improved working relationship between this committee and the Justice Department.

Additionally, I would like to discuss some concern I have over Justice's position on Equal Access to Justice Act. That bill was reauthorization of a law that is very popular and was passed by voice vote in both the House and Senate. Unfortunately it was then vetoed by the President.

We have to reconsider that. And we will be reintroducing the legislation and moving forward. If anyone, can appreciate the importance of reimbursement of legal fees when someone goes up against the deep pocket of the Government, it is obviously you right now.

The Equal Access to Justice Act allows small businesses and individuals to recover their costs when they successfully prevail against, a Goliath, the Government of the United States.

I view the position you now find yourself in and those of the small business people as the same.

There is probably no one in Government more attuned to their plight right now than you are. Well, I am going to reintroduce that bill shortly, as I said.

The issue in disagreement is the definition of the position of the United States and whether the position, which must be substantially justified, extends to the underlying agency action which led to that litigation.

I am going to go into some depth now, as I believe this is important to get on the record. Usually, how a court perceives "the position of the United States" makes no difference, since the Justice Department's argument in court is usually that the agency action at the heart of the lawsuit is reasonable.

However, assume that an agency has acted arbitrarily and a party consults a lawyer. If negotiations with the agency to resolve the problem fail, the party may elect to file a legal complaint against the Government.

If the Government's lawyers, usually the Justice Department or agency lawyers, or both, decide that the party's case has merit, a settlement will likely be proposed. Since the Government's legal decision to settle what might be termed a bad case was quite justified, limiting the definition of position means that the parties here will bear the complete cost of correcting a Government agency error, no matter how expensive it was to win that relief.

This scenario has been repeated often in the past 3 years. Congress intends equal access to justice to apply in situations when the Government's decision not to litigate was essentially an apology for the agency action that caused the lawsuit.

That is what we must clarify, and I believe you would concur with this view. I understand and appreciate the administration's fear of the potential for extensive discovery in fee proceedings. And I would echo the Supreme Court in *Bloom* v. *Stenson* that a fee petition is not meant to lead to a second full-blown proceeding.

And just as an example, I have some petitions right here—and we are not talking now about any discovery in those. In fact, it is my understanding that in the 19 States which have adopted Congress' interpretation of the law that fee applications have been decided on the submission of documents and discovery has not been required.

So my question is, can we not come to some agreement on this issue which will protect people such as yourself in the way I have described, while at the same time limiting discovery?

We must move quickly on this, as the current situation is untenable. There has been an unwillingness on the part of Justice to look at any other alternatives. We are talking about some finetuning; we are not talking about a major issue, and I think it is one that you are very sensitive to and I would like your reaction.

Mr. MEESE. Senator, I share your objective and your commitment to getting this problem corrected. I believe I mentioned that to you as early as last year when you and I discussed this matter immediately after the President's veto.

And I do commit to work with you to find the appropriate language to allow the payment of all reasonable attorneys' fees under those circumstances, while at the same time avoiding that problem of discovery which you yourself mentioned.

As a matter of fact, I would commit to do that even before being confirmed as Attorney General inasmuch as that falls within the kinds of things I can work on at the present time as Counselor to the President, in view of your desire to proceed expeditiously on this legislation.

Senator GRASSLEY. Well, I thank you very much, and I would ask you if you would do that in your capacity as counselor to the President.

Mr. MEESE. I would do it both as counselor to the President and, if confirmed by the Senate, as Attorney General.

Senator GRASSLEY. On another issue, the issue of regulatory reform, I understand that you are interested in pursuing comprehensive regulatory reform legislation in this Congress. I, too, of course, am interested in this legislation and have and will devote considerable effort to passing something if the administration were in a position to provide some visible support.

Can you share some of your thoughts with the committee on this subject?

Mr. MEESE. Yes, Senator. I have been consistently an advocate of the President's position in regard to regulatory reform. I believe the legislation is very necessary and desirable.

I also believe that with the *Chadha* decision of the Supreme Court, the guidelines are set to overcome the legislative veto issue, which was one of the major stumbling blocks to the past legislation. And I believe that legislation can be reintroduced and I would be a staunch supporter of that legislation.

Senator GRASSLEY. Another issue I have had a chance to discuss with you is legislation dealing with improving whistle-blower protections.

My subcommittee held hearings on the protection for whistleblowers, and has also received whistle-blower testimony on several occasions. This opportunity to have direct contact with these people has led me to the conclusion, a conclusion which I think is shared by many other people, that we are not taking very good care of these people who are willing to go out on a limb and expose waste, fraud, and mismanagement within the Government.

Many of them who courageously came forward in an effort to save us from wasting taxpayers' dollars, to be quite candid and frank, are not met with praise, but, in fact, retaliation from various superiors.

Last year, I sponsored a bill that would increase whistle-blowers' legal protections, but the Justice Department succeeded in killing the legislation. I plan to introduce a similar provision and hold hearings this session. I would like to ask you whether you can tell me what you would do as Attorney General in regard to enhancing legal protection for whistle-blowers.

Mr. **Meese**. Senator, I am generally in favor of working out legislation to protect those so-called whistle-blowers who are acting in good faith. I also am not entirely familiar, quite frankly, with the past legislation or the objections to it. I would make a good-faith effort to look into that and to work with you and your subcommittee to develop legislation that would properly protect those who are genuinely interested in the public interest in terms of the information they provide.

Senator **Grassley**. I have one final question on reform of the RICO Act. This act, as you know, was enacted to facilitate investigation and prosecution of organized crime. Because organized crime takes many forms and often penetrates legitimate organizations, including financial concerns, various sections of RICO cover civil fraud offenses.

This civil fraud section, however, has recently been invoked by private parties to charge legitimate financial organizations—specifically, American Express, E.F. Hutton, and others—with racketeering without any genuine allegation that organized crime was involved in the dispute.

My question, then, is should the RICO law be changed to clarify either that a crime must be shown to have occurred or that organized crime is involved so that RICO does not become merely a procedure to draw private litigation into Federal courts?

Mr. **Meese**. Senator, I believe that the legislative intent of the Congress in enacting the RICO statute was, as you properly state, to use it against organized crime, and that the civil penalties were a way to prohibit organized crime from getting away with actual criminal activity through so-called legitimate business disguises.

I think it would be worthwhile and I would commit myself to working with you and your subcommittee to review the actual experience under the law and see if appropriate changes are needed.

But I share with you the concern that what is essentially a form of action against criminal activity, even though civil penalties and civil actions are involved, not be misused as a means of carrying on ordinary civil litigation where no organized crime is involved.

Senator **Grassley**. Mr. Meese, those are the only questions I have for this round. If I am not able to attend for the second round, I may have some questions to submit to you in writing.

Mr. **Meese**. I will be happy to answer them, Senator.

Senator **Grassley**. Mr. Chairman, I am done.

The **Chairman**. Thank you. Yesterday, the hearing was scheduled to begin at 10 o'clock. I am informed that one or more TV's announced that I was late at the hearing. I was not late at the hearing. I was here ahead of time, but the question of the staff memo came up and the distinguished Senator from Ohio, Senator Metzenbaum; the ranking member, Senator Biden; and also Senator Kennedy and Senator Laxalt, and maybe Senator Hatch—several of us were in conference trying to reconcile that matter.

So in order for the news media to get the true facts, if they had inquired they would have learned that instead of making it appear that the hearing began late. I just want to clarify the record.

Senator METZENBAUM. Will the Senator yield?

The CHAIRMAN. Yes, sir.

Senator METZENBAUM. I hereby affirm and attest that Senator Thurmond was here on time. [Laughter.]

The CHAIRMAN. The distinguished Senator from Montana, Mr. Baucus.

Mr. BAUCUS. Thank you, Mr. Chairman. Mr. Chairman, I also think it is appropriate for you to show that not only did you not act improperly, but you have not conducted yourself so as to appear to have acted improperly. [Laughter.]

The CHAIRMAN. That is the reason you cannot go by perception.

Senator BAUCUS. That is right. [Laughter.]

Mr. Chairman and Mr. Meese, the questions I have to ask are along that line of questioning. I assume that you feel, Mr. Meese, that public officials most certainly should act ethically and according to normal standards of ethical conduct.

Mr. MEESE. Yes, sir, I do.

Senator BAUCUS. Do you also feel that public officials should avoid the appearance of impropriety or the appearance of unethical conduct?

Mr. MEESE. Yes, sir, I do.

Senator BAUCUS. Why do you believe that?

Mr. MEESE. I believe that, in order to maintain the confidence of the public in the institutions of Government, conduct should always be such that questions should be avoided whenever possible.

Senator BAUCUS. Well, I hear you and I agree with you. That seems to be a little bit of a restatement of the reason.

What are the public policy reasons? Going a little more deeply into it, why do you think it is important for public officials to avoid the appearance of impropriety?

Mr. MEESE. Well, in a democracy the support of the governmental institutions, I think, depends upon the confidence that the public has in their officials and the feeling that public actions are taken fairly and impartially and in the best interests of the public.

Senator BAUCUS. Do you think that is because for a society to function there has to be trust not only between individuals but among people and among institutions?

Mr. MEESE. Yes, sir, I do.

Senator BAUCUS. And do you think that the appearance of propriety helps establish that trust and establish that glue that is so important in a civilized society?

Mr. MEESE. Yes, it does.

Senator BAUCUS. And you further, therefore, I assume, would believe that appearances of improper conduct by a public official would tend to cause distrust, tend to break apart the glue that holds civilized society together?

Mr. MEESE. I think that under certain circumstances they could, yes.

Senator BAUCUS. So the more public officials either in fact acted improperly or appeared to act improperly, the less the people would trust their public officials, which would create the seeds ultimately for anarchy?

Mr. MEESE. Well, I am not sure that I would go that far, Senator.

Senator BAUCUS. I just said the seeds; I said ultimately.

Mr. MEESE. I think, certainly, that the confidence of the public in their institutions and officials of Government is a very important factor, yes.

Senator BAUCUS. Do you think it is appropriate for the Senate Judiciary Committee at this hearing to consider questions of propriety?

Mr. MEESE. Yes, sir.

Senator BAUCUS. That is, whether the nominee, in fact, has acted as a public official according to not only actual standards of ethics and propriety, but also the appearances of ethical conduct?

Mr. MEESE. I think that it is appropriate and proper for the Senate and this committee to do that, and I think that not only appearances, but also realities must be taken into account.

Senator BAUCUS. Why do you suppose we are here today asking lots of questions of appearances of improper conduct that you may or may not have engaged in? Why has this happened?

Mr. MEESE. Well, I think that it has happened because there is a genuine concern by members of the committee about issues that have been raised by people, some of whom have been opposed to me and some of whom have a genuine concern about this matter.

Senator BAUCUS. Do you think any of those questions are legitimate questions?

Mr. MEESE. Yes; I do. That is why I am prepared to answer all of them here.

Senator BAUCUS. Do you think that any of the several instances that have been discussed legitimately have raised questions in the public about appearances of impropriety?

Mr. MEESE. I am sorry. I do not understand the question, Senator.

Senator BAUCUS. Do you think that any of the instances—that is, promotion to colonel, for example, in the Army Reserve, or changing the reason for reimbursement from the Presidential Transition Fund, and some other financial dealings—do you think any of those that have been itemized in the press or discussed here at the hearing—do you think any of those legitimately have created the question of improper conduct on your behalf?

Mr. MEESE. Well, I think some, on the basis of the information they have received, have questioned those matters. I also think that in the various reports and investigations that have taken place, some four or five now, all of those questions have been answered conclusively.

Senator BAUCUS. I assume you mean the Stein Report and the basis of the facts as portrayed in the Stein Report, in your view, answer those questions?

Mr. MEESE. Well, not only that, but there has been an investigation by the General Accounting Office; there have been two reviews by the Office of Governmental Ethics. There has been the independent counsel's investigation and there has been an investigation by the Inspector General of the Army.

In every case, all of them have found that I acted properly and ethically.

Senator BAUCUS. The trouble, though, is that a lot of the American public have questions. They read about and see on television questions about several instances that I have described and some others as well.

The American public does not have the opportunity to read the Stein report; it does not have the opportunity to read the other reports that you describe. Do you not think that there has been a series of, if not actual improper conduct, at least a pattern that has sort of developed in each of these instances that at least creates the question of improper conduct?

Mr. MEESE. No, sir; I do not; I do not think there is any pattern whatsoever and I think this was brought out clearly, particularly in the independent counsel's report, as well as in the Office of Government Ethics report.

I think there have been efforts by some to try to create the improper and false appearance of a pattern, but actually when you look at the realities I think there is no such pattern whatsoever.

Senator BAUCUS. If you had gone through each of those instances all over again in light of this hearing and in light of the press and the attention that have been given to you, would you have done any of it differently?

Mr. MEESE. As I indicated yesterday, Senator, I think that as a result of the events of the last 4 years, and some of the questions raised at this hearing, it is only obviously common sense and prudence that I would try to bend over backwards to make sure that there was nothing from which people possibly could draw the wrong construction or could misconstrue or misinterpret my actions, and indeed I would do some of these things differently if it was a prospective situation.

Senator BAUCUS. What would you have done differently?

Mr. MEESE. Well, I think that we have learned from a lot of things. If the situations came up again in regard to, let us say, the McKean matter, I think there are some things there that possibly could have been done in the light of information that has come up since that time.

Senator BAUCUS. Such as?

Mr. MEESE. Such as making the financial information known to anyone that I was dealing with, even though at the time that was not felt to be necessary, nor, in fact, would it have in any way changed the ultimate events.

Senator BAUCUS. What about the promotion to colonel? Was that proper?

Mr. MEESE. The promotion was obviously proper. It was so found to be by the Inspector General of the Army.

Senator BAUCUS. What about that memorandum?

Mr. MEESE. The memorandum, Senator, was never shown to me. I believe it was made available, based on the information I received in the Inspector General's report. I do not recall the exact circumstances, but it is my recollection that I never saw the memorandum.

Indeed, the position I took at all times was that I did not want to see any internal Army memorandum or anything else because I did not want to be put in the position of having special knowledge or of appearing to influence the promotion decision. As far as I was——

Senator **Baucus**. What about the——

Mr. **Meese**. If I could just finish?

Senator **Baucus**. Sure.

Mr. **Meese**. As far as I was concerned, the entire issue as to whether I was qualified for promotion and, in fact, was selected for promotion was left entirely with the Army, and therefore I specifically rejected any so-called inside information such as that memorandum would have been.

Senator **Baucus**. What about the telephone call from the general?

Mr. **Meese**. I did not receive any telephone call from a general.

Senator **Baucus**. Did you receive a telephone call from anyone advising you of possible questions about the propriety of the promotion?

Mr. **Meese**. There is a telephone call referred to in the independent counsel's report, purportedly from the Secretary of the Army. I do not remember the phone call, but I am sure that in the phone call nothing was raised about any questions.

Senator **Baucus**. So you are telling me you do not recall any instances where anyone in any way suggested to you that it might be improper for you to receive the promotion at that time?

Mr. **Meese**. That is correct. In fact, the memorandum that you refer to did, in fact, say that it was proper, but that this particular general—I have read the memorandum since that time from the independent counsel's hearing, and the memorandum does not say that the promotion was improper, but rather that that particular general thought it was better to wait another year.

Senator **Baucus**. In that whole instance, though, is there anything there that you would have done differently?

Mr. **Meese**. I do not think that there is anything that I could have done differently, Senator. I think that at the time I suggested that I should wait another year and complete the Command General Staff College and was dissuaded from that by the representative of the Army who was talking to me.

Senator **Baucus**. So he made that suggestion?

Mr. **Meese**. Yes, sir.

Senator **Baucus**. Why did you make that suggestion?

Mr. **Meese**. Because I was still in the process of taking that course. I was then informed that I could get constructive credit because of my experience and knowledge and the daily activities from the national defense management seminar, and was encouraged by the representatives of the Army to take that route.

Senator **Baucus**. But if you suggested waiting and someone suggested going ahead that, to me, implies that you know that there was a question about the propriety of proceeding.

Mr. **Meese**. No; no question about the propriety. It was a question about alternative ways of getting the credit for the educational requirement, and indeed the validity of that system was verified in the memorandum to which you referred. There was no question about propriety whatsoever that was ever raised with me.

Senator **Baucus**. Did you ever raise the question of propriety with anyone?

Mr. **Meese**. I raised the question because I recognized in my position that it was proper for me to be, let us say, sensitive to any bending of regulations; that I did not want any treatment other than what was strictly in accord with Army regulations, and I raised that myself.

Senator **Baucus**. What about any of the other instances? What would you have done differently in any of the other——

Mr. **Meese**. I do not know what I could have done differently.

Senator **Baucus**. What about when the various people, Mr. Barrack and Mr. McKean, were suggested for positions?

Mr. **Meese**. Well, I already mentioned my thoughts as to Mr. McKean. In the case of Mr. Barrack, as the independent counsel points out, I did nothing to help Mr. Barrack get any position at any time.

Senator **Baucus**. Apart from what the independent counsel says, let me ask you directly did you in any way help Mr. Barrack get any position at any time?

Mr. **Meese**. No, sir.

Senator **Baucus**. Never, ever at all?

Mr. **Meese**. No.

Senator **Baucus**. Directly or indirectly?

Mr. **Meese**. The only action that I took, as, again, verified by the independent counsel's report, was that I sat on the review committee at the time that his name came through, several months after the sale of our house, and did not raise an objection to it, which obviously no one would expect me to do.

Senator **Baucus**. Yesterday at the hearing you said that the press of business perhaps caused you to not do all that perhaps you should have done in some of these matters. Is that a fair representation of what you said?

Mr. **Meese**. I believe I said that the press of business in the early days of the administration hampered me in the filling out of my financial disclosure form, yes.

Senator **Baucus**. Are you going to be any less busy as Attorney General?

Mr. **Meese**. Yes, sir; considerably less busy.

Senator **Baucus**. Would you explain that, please?

Mr. **Meese**. Yes. In the early days—I am talking about the first 2 months that I was in Washington—I was simultaneously trying to finish up the transition work, embark on a new job as counselor to the President, assist the President in setting up the governmental structure, including the development of the Cabinet council system and a variety of other policy and administrative organizations.

I was trying to move my family and all of our household goods from California here. I did not have my records with me at the time because they were in transit. These are the kinds of things I was talking about.

Senator **Baucus**. I appreciate that; I understand why you were busy then. My question is why are you not going to be busy as Attorney General.

Mr. **Meese**. I intend to be very busy as Attorney General, but I would think the circumstances are far different. Now, my family and all of my records and household goods are moved to the Washington area. I will only have one job, not three, to worry about.

Senator **Baucus**. That is a pretty big job, though.

Mr. **Meese**. I agree. I think the job that I have held has been a very busy one, too. But I have no doubt in my mind, Senator, that I will be able both to handle the position of Attorney General and maintain my personal affairs in good order.

Senator **Baucus**. Also, yesterday you mentioned something about—we have gone over this slightly—about the newness of Washington. Is Washington different from California?

Mr. **Meese**. Yes, sir, considerably.

Senator **Baucus**. I know that it is, but I would like to hear how you think it is.

Mr. **Meese**. Well, I think it was new in various ways. For one thing, just the matters that was discussed yesterday, these financial disclosure forms and the myriad of governmental forms that I had to fill out at that time were quite new.

The Federal Government is much more complex, much more burdensome in terms of its both regulations and the redtape involved in forms, than is California. I think that also there was the fact that a lot of new things were happening, and the fact that we were setting up a new administration. That all contributed to the newness, if you will, of the situation in which I was involved.

Senator **Baucus**. Redtape and forms are one thing, but that is not the core question here. The question is the appearance of improper conduct of public officials. Certainly, when you worked for President Reagan when he was Governor of California, you were a public official and I assume that you were acting according to the same standards of conduct then as in Washington. Is that a fair assumption?

Mr. **Meese**. Yes, sir; as a matter of fact, the standards of conduct in California, I am sure, are certainly as high as they are in Washington.

Senator **Baucus**. Well, I must tell you that I hear all that and I read quite a bit about all this and looked into it fairly deeply, and there are still some questions and I wondered if you had time to reflect on one of the questions that Senator Biden asked you yesterday; namely, what can you do to restore some of the lost confidence and lost trust that some American people have.

Have you given some thought to that over the night? Perhaps we can revisit that now and perhaps you can tell us some ideas you have as to what you might do if you are confirmed to restore some of that lost confidence on the part of some Americans.

Mr. **Meese**. Well, Senator, I am very hopeful about these hearings—I appreciate the efforts of you and the other Senators to bring out these questions so they can be fully and fairly answered and objectively evaluated.

And I think that these hearings themselves and the fact that the people have the opportunity to hear and to see the truth in itself will be helpful in this regard. Beyond that, as I mentioned yesterday, it would be my purpose—and I have thought about it before yesterday and certainly overnight—it would be my purpose to take every possible precaution to avoid any situation in which I might be involved in incidents or circumstances which could lead to either a misconstruction or a misinterpretation or misunderstanding of any of my actions, and to avoid the idea or question even that they would be other than the strictest observation of the highest ethical standards.

I think that I would take specific actions, some of which were detailed yesterday, in terms of any financial interest or financial holdings to be sure that I would never act on any of those, or on any matter that might possibly pertain to such holdings, in any way that might be perceived as improper.

I would also make declarations of all financial interests and would be willing, for example, to file financial statements on a regular basis with the appropriate office of ethics, and so on, even beyond what is required by the financial disclosure form.

Senator BAUCUS. Are you more likely to recuse yourself as Attorney General than you otherwise might based upon the experience of these hearings?

Mr. MEESE. Well, I think it would depend on the circumstances, Senator, but I would certainly, with the advice of the Office of Legal Counsel, the proper agency within the department, recuse myself in any case in which action by me would tend to provide any question as to propriety.

Senator BAUCUS. I do not know if this question was asked yesterday and I apologize if it was. Your reaction to the resolution that passed the Senate last year which advises the President not to have his Attorney General as campaign manager or a crony as his Attorney General because of the potential problems that causes—what is your reaction to that resolution?

Mr. MEESE. I think that passed prior to this administration, did it not?

Senator BAUCUS. Regardless of when it passed, I would like your reaction to it.

Mr. MEESE. Well, I answered that question for Senator Mathias, but if I may I will give you the same answer, and that was that I looked more deeply into the reasons for that resolution.

First of all, the parties that were specified in the original, that is, Senator Bentsen's proposal.

Senator BAUCUS. Correct.

Mr. MEESE. The category of persons in that particular proposal included such things as the national campaign chairman, the national finance director, the national party chairman, the national party finance chairman, people such as that.

My position in the campaign did not fall into those categories specifically. But, nevertheless, the reasoning behind the proposal was to prevent having as Attorney General a person who had incurred or who might seem to have incurred personal or political obligations during the time that he was serving in a political capacity.

I mentioned two things; first of all, that in 1980—which was the last time that I had, and really the only time in my life that I had, any major role in a political campaign—my work was in the field of policy and administration.

I was neither a delegate-hunter nor a votegetter, as such. And therefore, as I stated yesterday, I incurred no personal or political obligations of any sort, nor have I since that time or before that time. I come to this Senate hearing and will conduct myself in the future so that there will never be either the actual or perceived obligation by me to anyone either of a personal or a political nature.

Furthermore, I also mentioned yesterday that because of this, since the President nominated me for Attorney General and since I appeared initially before this committee in March 1984, I have refrained from any political activity whatsoever, even precluding attendance at fundraising activities of political candidates, and took no role whatsoever in the 1984 Presidential campaign.

Senator BAUCUS. So it is your view that the rationale for that resolution is to prevent people whose job was in the nature of a campaign from being appointed Attorney General, and that you have not been involved in campaign activities during the years you have been associated with President Reagan either as President or as Governor or in the interim, and therefore it does not apply to you?

Mr. MEESE. No, with the exception of 1980, when my role in the campaign was in the policy and administration area and was not involved in such activity that would give rise to any personal or political obligation.

Senator BAUCUS. I have no more questions.

[Whereupon, Senator Mathias assumed the Chair.]

Senator MATHIAS. I have a communication from the Senator from Alabama, Mr. Denton. He says, "Not wanting to delay the confirmation process any further, I submit the attached questions to Mr. Meese for the record."

Mr. Meese, are you willing to respond in writing to Senator Denton's questions?

Mr. MEESE. Yes, sir, I am.

Senator MATHIAS. Then, without objection, these questions will be submitted for the record and your answers will be included as a part of the record.

Mr. MEESE. Mr. Chairman, I might also state that I will see that the answers are provided to the chairman of the committee so that they will not delay the markup that he has scheduled for tomorrow.

Senator MATHIAS. Thank you, Mr. Meese.

Senator Heflin?

Senator HEFLIN. Mr. Meese, you have cleared up a number of questions in my mind concerning to some issues of your testimony. However, there are some other issues that still cause me considerable concern. One is the moving expense item. As I understand it, there was created in August 1980 with the anticipation that candidate Ronald Reagan would be elected President, a Presidential transition trust.

This trust had a trust agreement; funds were solicited to aid in the transition. It began functioning while the campaign was going on. Then after candidate Ronald Reagan was elected President in November 1980, a new trust was created which was called the Presidential transition foundation, which carried on similar work; maybe not altogether similar, but some similar work.

Now, the first one, the Presidential transition trust, in November, shortly after the election, caused some checks to be written, including the check to you in the amount of $10,000, dated November 12, 1980, which you cashed and deposited on November 22, 1980.

Thereafter, some question arose as to whether or not Federal employees could accept money from any outside source for moving expenses. It is my understanding that several people involved in the Reagan campaign requested information from the various legal counsel, including, I believe, the Office of Legal Counsel at the Department of Justice, and there was some question about as to whether or not the money could be legally accepted.

Some time after the check you received had been cashed, it was determined that rather than take a chance, or rather wanting to comply with the law or the perception of the law, if there was any question that the record should be changed from moving expenses to consulting fees.

Now, do you have a recollection as to when the suggestion was made, whether you made it or who made it, that the records be changed from moving expenses to consulting fees?

Mr. **Meese**. Senator, my recollection is that as soon as I heard that there might be a legal question of any sort, I conferred with the officials that were responsible for the transition trust.

I cannot at this point remember precisely who I talked with, but I believe it was Helene Von Damm, and this matter is covered quite extensively in the independent counsel's report. And it was my request at that time not only—it was not so much that the records be changed initially, but rather that I not accept any money from the transition trust in the form of reimbursement for moving expenses because I did not want to have any question whatsoever.

At the same time I said that I felt that I was entitled to some compensation if there was money left over from that trust as there was—and the trust provided that it could be used for any legal purpose, but I felt it was more important to be sure to avoid any possibility of legal conflict.

And so I asked properly that, since I had received no compensation for my services to the Reagan-Bush Planning Task Force, which was the entity that was funded by this trust which operated during the spring and summer and fall, up to the election of 1980, I be compensated in the amount of the $10,000 for the services I had rendered; and inasmuch as my relationship with the campaign, later with the transition, had been as a consultant, that this be a consulting fee.

This was agreed to, and it was after that, then, that I said I wanted to be sure that the records properly reflected the actual nature of the transaction. They agreed that the records would so reflect, and, as a result, made those appropriate changes both on the check and on their check register.

Also, I then received from the transition trust or the Reagan-Bush Planning Task Force a Treasury form indicating that that money came to me as compensation for services, and then I declared this as ordinary income as a consulting fee on my income tax and paid taxes on it.

Senator **Heflin**. The work for a consulting fee, I gather, would have been not just for the Presidential transition trust but also for the campaign for Reagan for President?

Mr. **Meese**. No; the consulting fee for which this amount was reimbursement was over and above any work that I had done and separate from the work that I had done in the campaign.

In other words, we had the Reagan-Bush Planning Task Force—a very small group—separately headquartered. They were located in an office in Alexandria, whereas the campaign office was in Arlington.

We wanted to keep the activity entirely separate so that there would be no diminution or diversion of energies from the campaign itself. This was a special group set up totally apart from the campaign.

I worked with them, meeting with them usually in the early morning between 6:30 and 8 or 8:30, before I would go to the campaign office. I often met with them late at night from 7 on at their offices in the Alexandria office of this special task force.

Senator **Heflin**. In calculating the consultant fees that were paid, did you do it on the basis of any time allocation or did you do it on a lump sum basis or judgment? What calculation did you use to arrive at $10,000 for your consulting fee?

Mr. **Meese**. Senator, it was paid in a lump sum amount, but what I did at the time was to calculate myself that the number of hours that I had put in over this period of time, on the average exceeded the amount that $10,000 would have represented at the normal rate of legal fees that I was charging at the time.

Senator **Heflin**. Now, on a basis of getting a payment of moving expenses in a lump sum of $10,000, how was that calculated? Was it calculated on the basis of what it would cost? Was there some investigation for moving expenses? How was the figure of $10,000 arrived at?

Mr. **Meese**. I do not know, Senator, because I was not a party to any discussion as to that amount. It is my understanding—quite apart from the record—that there was discussion by others and that some other people had had calculations of what their moving expenses might be, but I was not a party to any such discussion.

Senator **Heflin**. Well, I suppose you did move.

Mr. **Meese**. I did move and, in fact, the estimates of others were pretty accurate because I believe our moving expenses came to something in the neighborhood of $10,000 and a few hundred dollars.

Senator **Heflin**. Well, according to the Stein Report I believe that you paid somewhere in the neighborhood of $9,000.

Mr. **Meese**. Yes, sir. That was to the moving company. Then there were additional moving expenses, such as temporary housing here, and so on. So I think we declared on our income tax a total moving expense in excess of $10,000.

Senator **Heflin**. Do you know when the decision was made that the record would be changed from moving expenses to consulting fees?

Mr. **Meese**. The discussion I had which I just related, that I would receive it only on the basis of a consulting fee, I believe, was made sometime during the month of December, probably relatively early in December.

Senator HEFLIN. Well, if that is correct, on your disclosure form that you filed, dated February 20th—the disclosure form calls for compensation in excess of $5,000 paid by one source. You list the Citizens for the Republic as legal counsel; Reagan for President, consultant on political campaign staff, policy and operations; Presidential Transition Foundation, which, as I understand, is different from the Presidential Transition Trust and for which I understand from the Stein Report, you were paid $4,000 a month from the Presidential Transition Foundation.

Mr. MEESE. I listed the Presidential Transition Foundation as a single entity: my calculation in reporting was that there were two separate funds, but I listed the generic organization rather than the separate funds. I was actually paid out of two funds, but they were part of the same organization, the Presidential Transition Foundation, and this was found by the independent counsel to be a proper way to report.

Just as in the case of the previous entry that you read, the Presidential campaign, there were actually a series of funds, relating to various stages in the campaign, out of which I was paid, but it was all part of the same campaign.

Senator MATHIAS. Senator Heflin, would you suspend for just one moment?

It might assist in completing the record if we put into the record copies of the checks to Mr. Deaver, to Mr. James, to Mr. Clark and to Mr. Meese, with the check stubs and with the IRS 1099 forms.

Now, we do not have a copy of the check to Mrs. Von Damm. However, we do have the check stub and we do have the Form 1099. So, without objection, I would offer those items for the record at this point. I believe it will make your line of questioning more clear.

Senator HEFLIN. All right, sir.

Senator MATHIAS. Without objection, so ordered.

[The following were received for the record:]

DICKSTEIN, SHAPIRO & MORIN

PETER W. MORGAN

January 18, 1985

HAND-DELIVERED

Mr. Robert J. Short
Chief Investigator
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Duke:

bob wallach asked that I forward to you copies of the enclosed documents:

1) Check #1069, dated November 12, ~~1970~~ 1980 to Mr. Meese from the Presidential Transition Trust;

2) An entry in the check ledger book relating to check #1069;

3) The Footnote From Arthur Andersen Report on Presidential Transition Trust; and

4) Mr. Meese's 1980 Form 1099 relating to the payment of $10,000.

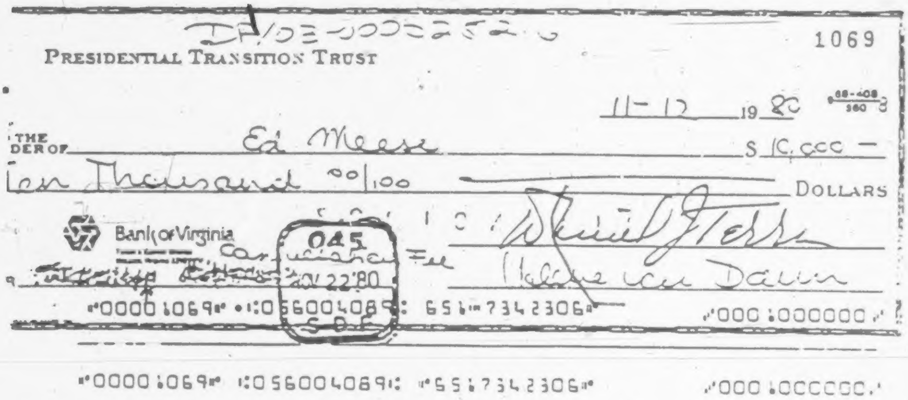
We received the copy of the check from Tim Ryan, who did not ~~process~~ possess a copy of the back of the check. The original of the check, as we understood it, was in the possession of Arthur Andersen, which would not supply us with a copy at the time.

Sincerely,

Peter

Peter W. Morgan

Enclosures



IP/03-00022526

PRESIDENTIAL TRANSITION TRUST

1069

11-12 19 80 $\frac{68-408}{560}$

THE ORDER OF Ed Meese $ 10,000 —

Ten Thousand 00/100 DOLLARS

Bank of Virginia

~~[illegible]~~ Consultant Fee

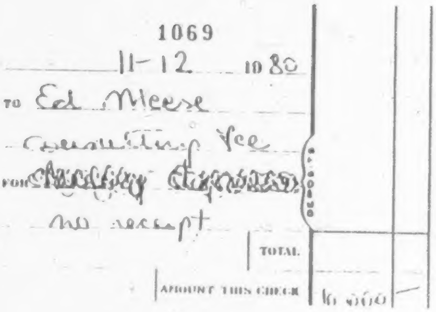
045
NOV 22 '80

Daniel J Terra

Helene von Damm

⑈0000 1069⑈ ⑆056004089⑆ 651⑈7342306⑈ ⑈000 1000000⑈

⑈0000 1069⑈ ⑆056004089⑆ ⑈651⑈7342306⑈ ⑈000 1000000⑈



1069

11-12 19 80

TO Ed Meese

Consulting fee

FOR ~~[illegible]~~

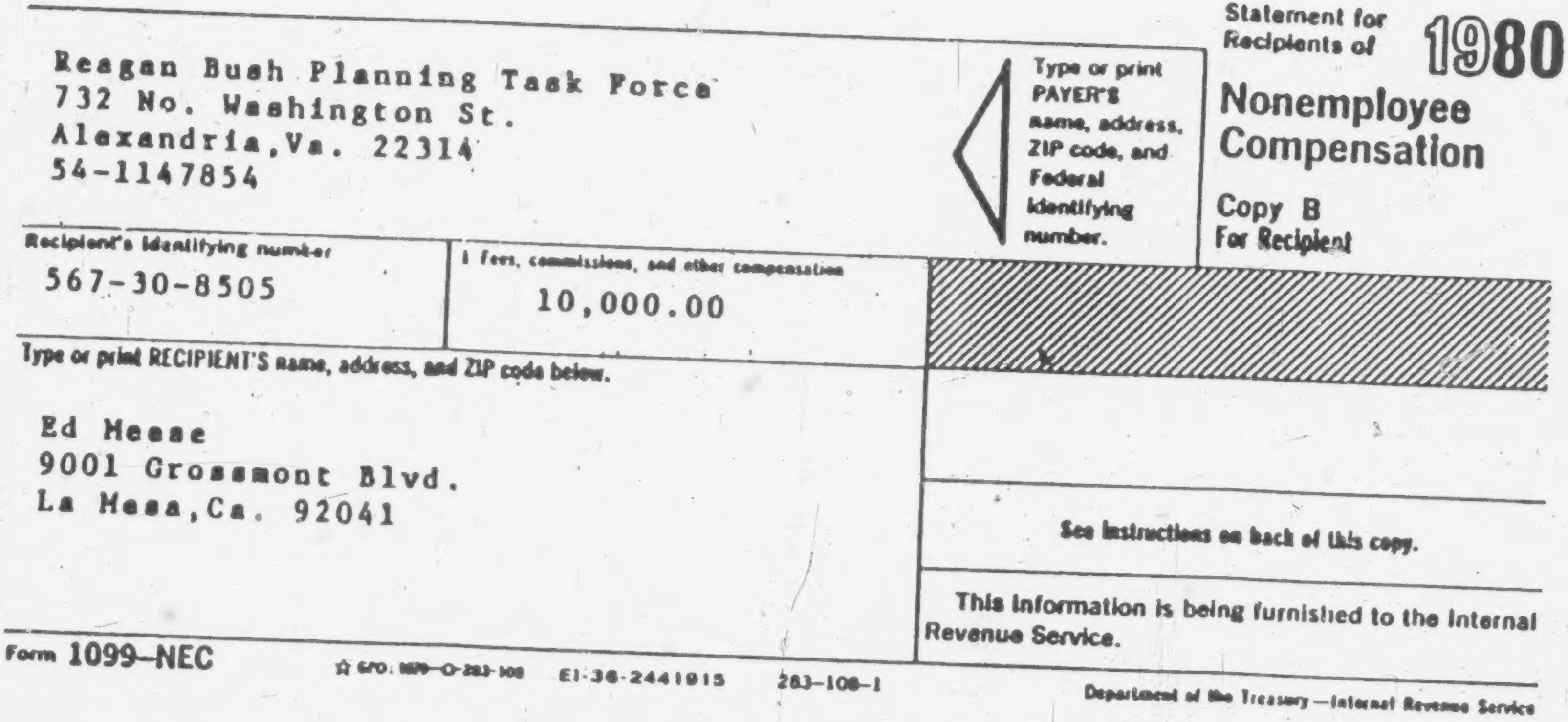
no receipt

TOTAL

AMOUNT THIS CHECK 10,000 —

Footnote From Arthur Anderson Report on Presidential Transition Trust

"On the check stubs for these checks part of the description was blocked out. The remaining legible description is as indicated. Per examination of the actual cancelled checks, for all checks except checks numbered 1077 and 1098, part of the description of purpose was also blocked out. The remaining legible description is 'consulting fee.' The unaltered description of check number 1098 reads 'moving expenses.' The entire description on check number 1077 has been blocked out."



Statement for Recipients of **1980**

Nonemployee Compensation

Copy B
For Recipient

Reagan Bush Planning Task Force
732 No. Washington St.
Alexandria,Va. 22314
54-1147854

Type or print PAYER'S name, address, ZIP code, and Federal identifying number.

Recipient's identifying number: 567-30-8505

1 Fees, commissions, and other compensation: 10,000.00

Type or print RECIPIENT'S name, address, and ZIP code below.

Ed Meese
9001 Grossmont Blvd.
La Mesa,Ca. 92041

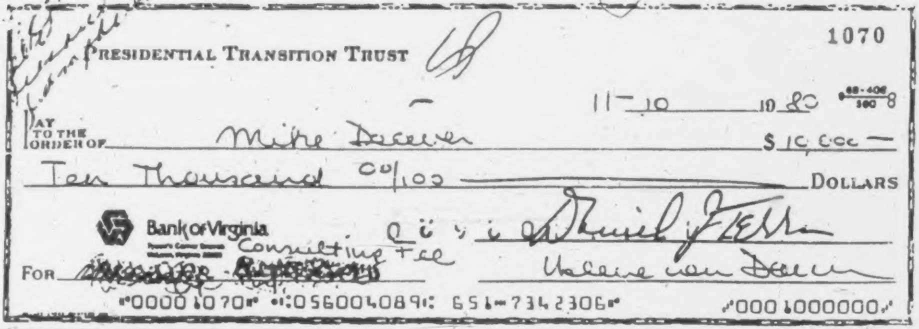
See instructions on back of this copy.

This information is being furnished to the Internal Revenue Service.

Form **1099–NEC** ☆ GPO: 1979—O-283-108 EI-36-2441915 283-108-1

Department of the Treasury—Internal Revenue Service

197



PRESIDENTIAL TRANSITION TRUST

1070

11-10 19 80 $\frac{68-406}{560}$ 8

PAY TO THE ORDER OF Mike Deaver $ 10,000 —

Ten Thousand 00/100 DOLLARS

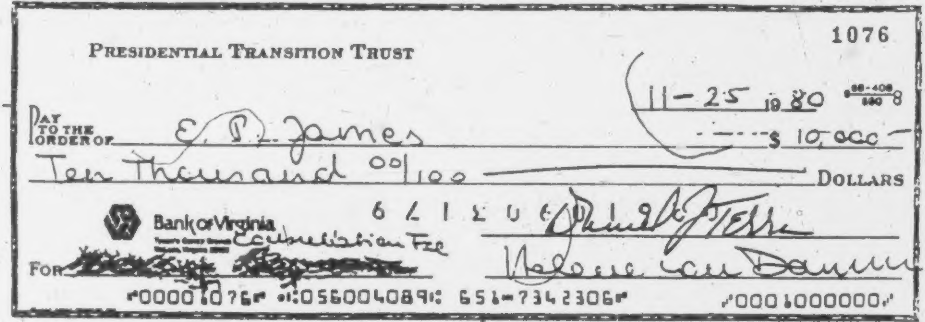
Bank of Virginia

FOR [redacted] Consulting Fee

Daniel J Terra

Valerie von Damm

⑈0000 1070⑈ ⑆056004089⑆ 651-7342306⑈ ⑉0001000000⑉



PRESIDENTIAL TRANSITION TRUST

1076

11-25 19 80 $\frac{68-406}{560}$ 8

PAY TO THE ORDER OF E. P. James $ 10,000 —

Ten Thousand 00/100 DOLLARS

Bank of Virginia

FOR [redacted] Consultation Fee

Daniel J Terra

Valerie von Damm

⑈0000 1076⑈ ⑆056004089⑆ 651-7342306⑈ ⑉0001000000⑉

⑈0000 1076⑈ ⑆056004089⑆ ⑈6517342306⑈ ⑉0001000000⑉

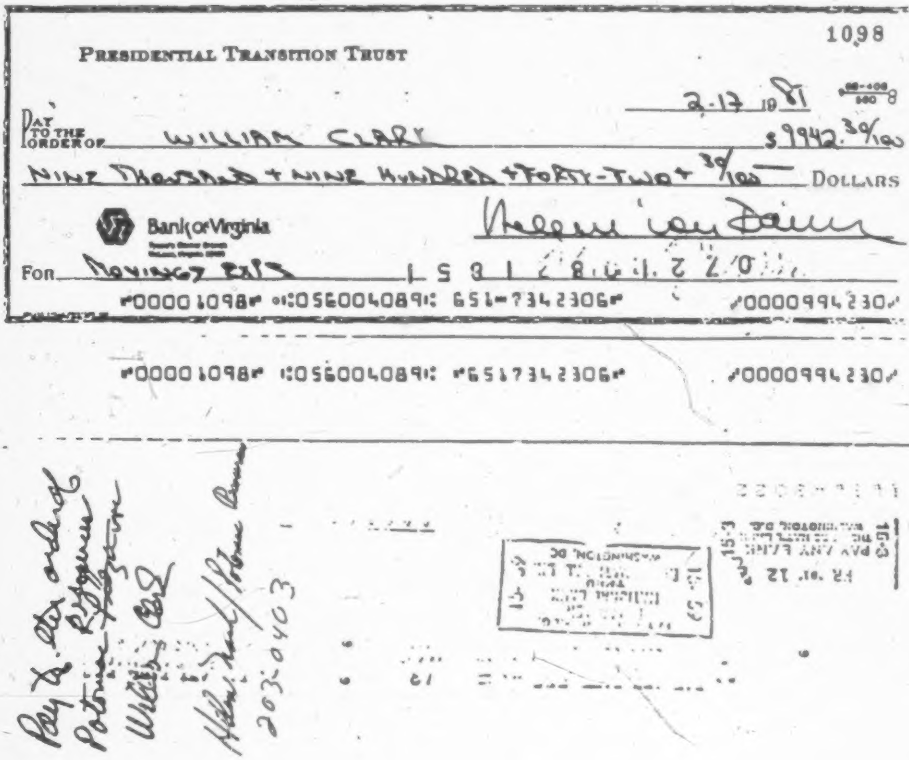
Mike Deaver
for deposit only

For deposit
only

E. P. James

Acct. # 20-14-146-641

PROCESSED
WELLS FARGO BANK
SAN FRANCISCO, CA.
PAY ANY BANK



1098

PRESIDENTIAL TRANSITION TRUST

2.17 1981

PAY TO THE ORDER OF WILLIAM CLARK $9942.30/100

NINE THOUSAND + NINE HUNDRED + FORTY-TWO + 30/100 DOLLARS

Bank of Virginia

FOR Moving Exps

⑈00001098⑈ ⑆056004089⑆ 651-7342306⑈ ⑇0000994230⑇

Pay to the order of
Potomac [illegible]
William Clark
[illegible]
203-0403

TO A C Gilder

FOR Accounting Services

TOTAL

AMOUNT THIS CHECK 350 00

BALANCE 51935 46

1068

11-12 1980

TO ~~Pen James~~

Bennett Archambault

FOR Chicago luncheon

w/Pen James on

10-24

TOTAL

AMOUNT THIS CHECK 336 76

BALANCE 51,098 70

1069

11-12 1980

TO Ed. Meese

Consulting fee

FOR [illegible]

no receipt

TOTAL

AMOUNT THIS CHECK 10,000 —

TO E. P. James

Consulting fee

FOR [illegible]

1100 —

TOTAL 20,725 23

AMOUNT THIS CHECK 10,000 —

BALANCE 10,725 23

1077

11-25 1980

TO Helene von Damm

consulting fee

FOR [illegible]

TOTAL

AMOUNT THIS CHECK 2000 —

BALANCE 18,725 23

1078

11-25 1980

TO Vorys, Sater, Seymour

+ Pease

FOR prof fee

TOTAL

AMOUNT THIS CHECK 10,058 43

TO Mike Deaver
Consulting fee
FOR [redacted]
no receipt

TOTAL	
AMOUNT THIS CHECK	10,000 —
BALANCE	31,098 10

FOR Accting Serv.

TOTA
AMOUNT THIS CHEC
BALANC

1071

11-12 19 80

TO E. J. James

FOR Staff Dinner
Election Night
11-12

TOTAL	
AMOUNT THIS CHECK	374 47
BALANCE	30,724 23

1098

2-17 1981

TO WILLIAM CLARK

CONSULTING FEE
FOR [redacted]

TOTA
AMOUNT THIS CHEC
BALANC

1072

19

TO

FOR
NOT USED

TOTAL	
AMOUNT THIS CHECK	Entered *S @ Future Point
BALANCE	

1099

19

TO

FOR

TOTA
AMOUNT THIS CHE
BALAN

Statement for Recipients of **1980**

Nonemployee Compensation

Copy C
For Payer

Type or print PAYER'S name, address, ZIP code, and Federal identifying number.

Reagan Bush Planning Task Force
732 No. Washington St.
Alexandria,Va. 22314
54-1147854

Recipient's identifying number	1 Fees, commissions, and other compensation
565-50-7363	10,000.00

Type or print RECIPIENT'S name, address, and ZIP code below.

Michael Deaver
1415 38th Street
Sacramento,Ca. 95816

For instructions on completing this form, see "Instructions for Form 1096."

Form 1099–NEC ☆ [illegible] 21-36-2441918 283-108-1 Department of the Treasury—Internal Revenue Service

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Reagan Bush Planning Task Force
732 No. Washington St.
Alexandria,Va. 22314
54-1147854

name, address, ZIP code, and Federal identifying number.

Compensation

Copy C
For Payer

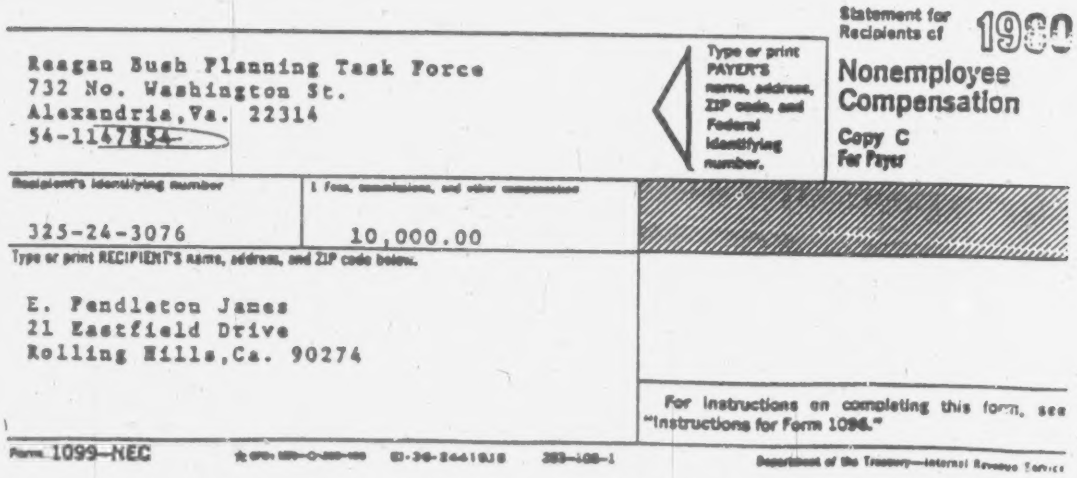
Recipient's identifying number	1 Fees, commissions, and other compensation
382-42-3579	2,000.00

Type or print RECIPIENT'S name, address, and ZIP code below.

Helene Von Damm
526 Teal Plaza
Secaucus,New Jersey 07094

For instructions on completing this form, see "Instructions for Form 1096."

Form 1099–NEC ☆ [illegible] 21-36-2441918 283-108-1 Department of the Treasury—Internal Revenue Service



Statement for Recipients of 1980

Nonemployee Compensation

Copy C
For Payer

Type or print PAYER'S name, address, ZIP code, and Federal identifying number.

Reagan Bush Planning Task Force
732 No. Washington St.
Alexandria,Va. 22314
54-1147854

Recipient's identifying number	1 Fees, commissions, and other compensation
325-24-3076	10,000.00

Type or print RECIPIENT'S name, address, and ZIP code below.

E. Pendleton James
21 Eastfield Drive
Rolling Hills,Ca. 90274

For instructions on completing this form, see "Instructions for Form 1096."

Form 1099—NEC [illegible] 283-108-1 Department of the Treasury—Internal Revenue Service

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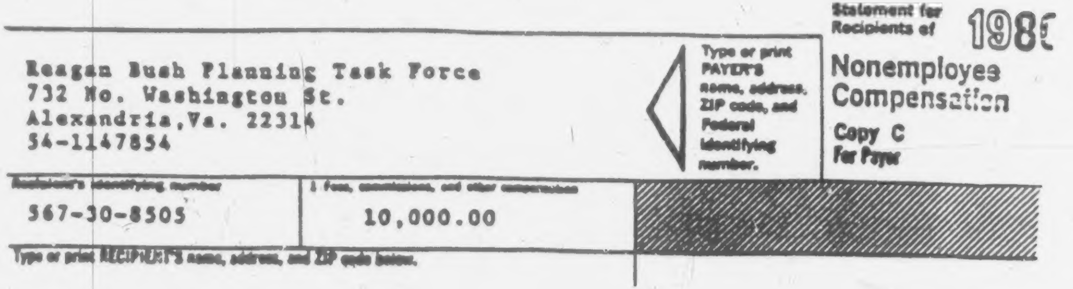

Statement for Recipients of 198

Nonemployee Compensation

Copy C
For Payer

Type or print PAYER'S name, address, ZIP code, and Federal identifying number.

Reagan Bush Planning Task Force
732 No. Washington St.
Alexandria,Va. 22314
54-1147854

Recipient's identifying number	1 Fees, commissions, and other compensation
567-30-8505	10,000.00

Type or print RECIPIENT'S name, address, and ZIP code below.

Senator **HEFLIN**. Could it have been that this was not determined? I would like to see those checks. In this record, they list the checks as being November 10, a check of $10,000 to Mike Deaver, a check of $10,000 on November 25, 1980, to E.P. James, and a check of $2,000 on November 25, 1980, to Helene Von Damm.

The record states that on February 17, a check was made in the amount of $9,942.30,to William Clark and the check to Clark was at that time marked "moving expenses." Now, I wondered if this report is filed here on February 20—and if this matter pertaining to moving expenses arose at a later date. I am trying to be——

Mr. **MEESE**. Senator, it did not arise as far as my case was concerned. I do not know about the others.

Senator **HEFLIN**. Do you think yours arose earlier?

Mr. **MEESE**. Yes, sir, I am sure that it arose earlier. It arose long before, at least a month or so before I entered public service as a member of the Government.

Senator **HEFLIN**. There has been some criticism about this matter. Common Cause has this statement which reads, "Would a man sensitive to ethical standards who has received a $10,000 payment that he learned was 'probably illegal' be content to keep the money and simply have the record changed to read 'consulting fees?' "

That is on page 28 of their publication The Case Against Edwin Meese for Attorney General. I would like to hear your reply. They are contending, I suppose, that you should have returned the check, submitted the bill for consulting fees and then been paid for consulting fees.

Mr. **MEESE**. Well, Senator, perhaps today I would go through that rigamarole to avoid even Common Cause finding anything to question. But at the time, in the heat of the transition activity, I felt that I had done everything that was necessary and possible to make sure the records accurately reflected the basis on which I received the money.

In other words, I went to the people who were responsible; I gave them the only basis on which I would accept the funds, which was a basis which was clearly legitimate and acceptable, that had no legal question about it. And I might say even the other legal question could have been contested had I wanted to challenge it, because, as the Independent Counsel found, there probably was no illegality.

But, nevertheless, I did not want even any question, so I went to the people, changed the basis for compensation totally, and then had the records changed to reflect it properly on my records, received the income tax statement on it, and paid income tax on that amount. So I felt at the time that I had done everything possible or reasonable in order to reflect that.

I think that this is reflected again in the independent counsel's report, in which they corroborated all of the statements that I made and said that they do not believe there was any violation to be established even if the section of the law were construed to forbid the payment of moving expenses, a conclusion which they themselves challenge. I felt at the time that I had done everything necessary in order to be sure that both the fact and the records accurately reflected the basis for the transaction.

Now, I think in hindsight, as Common Cause does, 4 years later, you always think of additional things that might be done. At the time, they did not occur to me.

Senator HEFLIN. The Bentsen amendment argued that the close campaign figure should not be the Attorney General for a successful candidate for president. In 1980, you were a consultant. Are you saying that the Bentsen amendment does not apply to you because others are specifically named and you are not one of those named individually. Is this correct?

Mr. MEESE. That is part of the reason, but beyond that I think the reasoning of Senator Bentsen's proposal, why a person named in the proposal should not be Attorney General, is based upon the idea that a person who is in a political position such as those named necessarily, as I believe the language went, incurs personal and political obligations as a result of seeking delegates or votes in the campaign.

And what I have said to Senator Mathias, and what I have said to Senator Baucus, is that the position I was in was not essentially a delegate-obtaining or vote-getting type of work. I was in the policy and administrative end, but more importantly than that at no time did I incur any personal or political obligations, not at that time or any time since.

Senator HEFLIN. Now, during the campaign you drew a consulting fee from the transition trust. What was your compensation from the Presidential Transition Foundation after the election?

Mr. MEESE. I did not draw a salary, Senator. I drew a consulting fee——

Senator HEFLIN. All right.

Mr. MEESE. A consulting fee in the amount of—I believe it was roughly equivalent to what I would have received had I been a Government employee. I think it was somewhere in the neighborhood of $4,000 a month.

Senator HEFLIN. During the campaign were you paid a consultant fee or a salary?

Mr. MEESE. Yes, sir, I was. I was paid a consulting fee of various amounts. When the campaign had more resources, I was paid a normal salary, I think, of somewhere around $5,000 a month. When they had less resources, I was paid less than that; I think $3,600 a month.

Senator HEFLIN. The Presidential Transition Trust, as stated by the Stein Report, was going out of existence. You also had another foundation which was created thereafter. And as I understand it there two separate entities——

Mr. MEESE. I think there were two separate funds, Senator, yes.

Senator HEFLIN. Well, two separate funds, and there was an excess in the Presidential Transition Trust. Was it out of this excess that it was decided that expenses for moving would be paid?

Mr. MEESE. Yes, sir.

Senator HEFLIN. That was an excess?

Mr. MEESE. That was out of the surplus from the original trust which covered those expenses only up to the date of the election.

Senator HEFLIN. Now, let me go to the Barrack matter where the sale of the house—took place somewhere around December 1. In

November Barrack was offered a job in Interior by Secretary Watt, but this was not a Presidential appointment.

And then probably sometime in January or February, he was offered a Presidential appointment in Commerce. In the Stein Report I believe there is a statement that says you had never contacted Secretary Watt or Secretary Baldrige on behalf of Mr. Barrack.

Did the senior staff personnel committee act concerning the Interior appointment?

Mr. MEESE. No, sir, it did not, because it was not the kind of an appointment that was a Presidential appointment. It was an appointment strictly within the province of the Secretary of the Interior.

I wonder if I could, though, respectfully correct one other thing in the premise to your question. The house sale was actually in September, not December. It was September 1.

Senator MATHIAS. The Chair regrets to advise the Senator from Alabama that his time has expired.

Senator HEFLIN. All right, sir. I had it recorded as September; my voice mistake. We all make mistakes, do we not?

Senator MATHIAS. The next member of the committee to be recognized is the distinguished Senator from Pennsylvania, Mr. Specter. I wonder, Mr. Specter, if you would allow me to just complete very briefly a line of questioning that I started yesterday and then I will recognize you.

Senator SPECTER. Of course.

Senator MATHIAS. Mr. Meese, when my time expired yesterday, we were discussing National Security Decision Directive 84.

Mr. MEESE. Yes, sir.

Senator MATHIAS. One provision of that document directed the Attorney General to convene an interdepartmental group to recommend changes in Federal personnel security programs, and as far as I know, that portion of the document was not suspended by the President's order.

You, I am sure, know more about that than I do because you were a party in that transaction. Do you know what has been done to implement this provision of the document?

Mr. MEESE. No, sir, I do not. I do not know whether that has been implemented. There is an interdepartmental group meeting under the auspices of the National Security Council on this subject. I think that group may have undertaken to carry out those responsibilities. However, it is not under the auspices of the Attorney General.

I would be very much interested, if confirmed by the Senate, obviously, in undertaking those responsibilities and making sure that there was such a group.

Senator MATHIAS. Do you have any specific plans or thoughts in mind as to what you would do in this area if you were confirmed as Attorney General?

Mr. MEESE. Yes, Senator. I think this would be an excellent type of subject to undertake in an interdepartmental group, which would be a working group of the Cabinet Council on Legal Policy, which would put the matter into the highest echelons of policy consideration by the administration.

Senator MATHIAS. Do you have any specifics in mind or are you just thinking in terms of a general review of the area?

Mr. MEESE. My thought would be to have a general review of the area, and also, if confirmed as Attorney General, to consult with you and other members of this committee, as well as the intelligence committees, and also to consult with the President's Foreign Intelligence Advisory Board, which has done work in this area, to obtain these various counsels as to the subject matter and the process by which this review could be conducted.

Senator MATHIAS. Yesterday, you said you thought that your experience had taught you that polygraph tests should be administered as a kind of screening process and that they should be administered on a voluntary basis.

What do you think of the results of polygraph tests as evidence in courts of law?

Mr. MEESE. Senator, I do not believe that polygraph tests have sufficient validity so that the results could or should be used as valid evidence in courts of law. I think I have had a great deal of experience, as I mentioned yesterday, with the use of the polygraph. It is an investigative tool that is useful in certain circumstances, but I certainly would not subscribe to its use as evidence in courts of law.

Senator MATHIAS. And just one last subject, Mr. Meese. Your name has been mentioned in connection with the nomination of Ray Donovan to be Secretary of Labor. Could you describe briefly your role in the events that led up to his nomination?

Mr. MEESE. Senator, I participated as a member of a group of approximately 20 people that was convened by the President after his election to propose to him the names of people who might be considered for the Cabinet upon his taking office.

In the course of those deliberations, the name of Ray Donovan was suggested by someone else. I was not personally acquainted with Ray Donovan, although I may have met him at the time. I am sure I probably did meet him at some point during the campaign, but was not well acquainted with him.

This name was among those presented in a panel of names to the President for various Cabinet positions. Would you like me to go into the transition period?

Senator MATHIAS. Well, for instance, in the Albosta subcommittee investigation there was some evidence that your telephone logs had included a call on December 4, 1980, which was during the transition period, in which Dick Allen had called you and said that he had to show you a document the minute he returned and then it would be destroyed. I am wondering if you ever saw that document.

Mr. MEESE. I do not have any recollection of what that document was or that it pertained to Mr. Donovan.

Senator MATHIAS. Just to refresh your recollection, the Albosta Report said:

> Mr. Meese said that if Allen had anything to show him at that time, it would probably be something to do with Ray Donovan. He said that about this time questions began to surface about Donovan's connection in New Jersey. Mr. Meese stated that this document did not represent any organized attempt to gain data from the Carter campaign.

which was, of course, the subject of the Albosta Report.

Mr. **Meese**. Yes, sir; that is correct. I do not recall any document that pertained to Mr. Donovan, but about that time or sometime at approximately that period, there was information which came to me that there was some talk or some question raised in New Jersey about Mr. Donovan and a possible link to organized crime.

At the time, I called Director Webster of the FBI on other matters and in the course of a variety of business with him I asked if there was anything that the FBI had developed in the course of their background investigation which I should pass on to the President which would keep him or should keep him from announcing to the public his intention to nominate Mr. Donovan.

Senator **Mathias**. That was on December 5?

Mr. **Meese**. I guess so.

Senator **Mathias**. The day after this call that is reported from Mr. Allen?

Mr. **Meese**. Yes, sir, although I do not recall the Allen situation, but it is possible.

Senator **Mathias**. Can you tell us what Judge Webster replied?

Mr. **Meese**. A few days later, Director Webster responded to me that he had checked with the background investigators and there was nothing that would reflect on Mr. Donovan or any reason for the President to hold up on the announcement of his potential nomination.

Senator **Mathias**. The New York Times carried a story on December 13, 1980, which would have been a week later, which stated that you had called Jackie Presser, the president of the Teamsters, in connection with the Donovan nomination. Do you recall that?

Mr. **Meese**. No, sir; I do not believe that happened.

Senator **Mathias**. That is not an accurate report, as far as you are concerned?

Mr. **Meese**. No, sir; I do not believe there is any basis on which I would have called—at least I have no recollection of any reason why I would have called Jackie Presser in relation to Secretary Donovan unless—it is possible that I might have advised Mr. Presser, who had been a supporter of the President during the campaign, that I was returning a phone call to him that Mr. Donovan was likely to be nominated as Secretary of Labor. That is entirely possible.

Senator **Mathias**. You do not——

Mr. **Meese**. But I do not recall doing that. It is entirely possible that I did, however.

Senator **Mathias**. You do not recall talking to Mr Presser on that subject at all?

Mr. **Meese**. On the subject of Mr. Donovan being Secretary of Labor?

Senator **Mathias**. Yes.

Mr. **Meese**. I do not recall it, but it is entirely possible that I did. It would not have been unusual for me to have advised him, along with other labor leaders, that Mr. Donovan was going to be Secretary of Labor.

It is also possible that there may have been something in the paper about it and I might have been responding to a call from him.

Senator **Biden**. Will the Senator yield for a second on that one point?

Senator **Mathias**. Well, I am trespassing on the Senator from Pennsylvania's time. I would be happy to yield.

Senator **Biden**. I just wanted a clarification to your question.

Senator **Mathias**. Well, if the Senator from Pennsylvania is agreeable.

Senator **Biden**. Never mind.

Senator **Specter**. Senator Biden, I would yield on the yield.

Senator **Biden**. Maybe Republicans operate differently than we Democrats, but there were not that many labor supporters at the time. Is it not highly improbable that you would fail to call Presser to tell him?

I mean, I find it hard to believe that you would not; that there would be any prospect of you not making sure that the labor leaders who supported you did not know before the press knew who you were going to appoint.

Mr. **Meese**. Senator, I am sure that it would have been probable if the operation was working well that that would have been done, but probably not by me, or not necessarily by me. There were usually other people who attended to those kinds of things, although in this case I may have.

Senator **Mathias**. Now the Chair recognizes the Senator from Pennsylvania for his full questioning, with thanks.

(Whereupon, Senator Thurmond resumed the Chair.)

Senator **Specter**. Thank you, Mr. Chairman.

Mr. Meese, I would like to cover a number of subjects with you during this round or subsequent rounds, and I would like to begin with the issues which have been raised about certain jobs.

I believe that I understand the transactions, but I would like to be sure, and I would like to take a few moments this morning to fully understand and to establish the record on the points.

I agree with the observations made earlier that it is our responsibility to get to the substance of the matters as opposed to appearance, because that is our job. There have been many editorial comments about the issue of whether you should or should not be confirmed, and those comments do not have an opportunity to delve into the details, which we do here.

It is worth just a moment to observe that Senator DeConcini and I were on a television program last night--there is enormous public interest, obviously, in this matter—and I was asked a complex question and started to respond, and the commentator said, "Could you please make that brief, because we have to take a break?" I said that is precisely the nature of the problem in terms of understanding what the complex facts are.

Then he said, "Well, we are going to give you an extra nine minutes in this segment."

I said, "That is a follow-up illustration of the difficulty, because you cannot do it in a brief answer; you cannot do it in nine more minutes."

I am glad that we are taking the time to go through it, and others will have a chance to comment about these same factual materials.

With respect to the transaction involving Mr. John McKean, I would appreciate it, Mr. Meese, if you would state your response, and to the extent that independent counsel differs with your response, if you would specify that as well, to the extent that you are able to do that.

There were two loans, as I understand it, totaling $60,000, and then there had been a first loan of some $40,000. Now, at the time that Mr. McKean was under consideration for a Federal job, what was the status of the loan transaction?

Mr. MEESE. The first time that he was suggested for a job by someone other than me, at that time he had arranged a loan of $40,000 for me, as my accountant.

Senator SPECTER. Was he under consideration for a job at that time?

Mr. MEESE. Not at the time that he arranged the loan, no, sir. As a matter of fact, the independent counsel made it clear that there was no evidence that I had solicited a loan from him with the expressed or implied intention of assisting him in obtaining a Government position, or that Mr. McKean offered to arrange a loan in the expectation or understanding that I would assist him.

In fact, at the time that the loan was arranged, Mr. McKean had absolutely no idea that he would ever be interested in or be solicited to receive a Federal position of any sort.

Senator SPECTER. When the loan was discussed between you and Mr. McKean, was there any discussion about a Federal job at that time?

Mr. MEESE. No, sir, none whatsoever.

Senator SPECTER. What happened next in the sequence of events? Was Mr. McKean considered for a Federal job before the second loan?

Mr. MEESE. He was considered—he was suggested by another colleague in the White House for the part-time position on the Postal Board of Governors subsequent to the $40,000 loan. He was recommended by this colleague in July 1981——

Senator SPECTER. That colleague was——

Mr. MEESE [continuing]. Mr. Deaver. The $20,000 portion of the loan was not received until December 1981. I must say however that the idea that there would be a total line of credit, as it were, of up to $60,000 was discussed before anything else happened.

Senator SPECTER. Had there been an agreement to have the full line of credit up to $60,000 prior to the time Mr. McKean was considered for the job?

Mr. MEESE. Yes, sir.

Senator SPECTER. Did Mr. McKean make a commitment to the full line of credit up to $60,000?

Mr. MEESE. Yes, sir; he said he would arrange and had obtained such a line of credit.

Senator SPECTER. The Ethics Committee report refers to an issue of forebearance on the interest. What is your response to that, Mr. Meese?

Mr. MEESE. Well, as the Office of Government Ethics found, there was no problem, or unethical conduct, in this. It had to do with a technical matter that came up when the Office of Government Ethics originally reviewed this matter in 1982. It had to do with—or, I guess, actually, it was 1983, I think, when they originally reviewed it—whatever the date was—it had to do with the fact that Mr. McKean had recommended to me that I defer the payment of a portion of the interest in 1982 to 1983 for tax purposes because it would be more valuable to me in 1983, inasmuch as in 1982 I had paid over $60,000 in interest because of the sale of the home.

Senator SPECTER. Was the full interest paid, ultimately?

Mr. MEESE. Yes, sir; the entire interest was paid. Then, because there was an additional period of time that lapsed, and interest was deferred further, I paid the interest on the interest when we concluded the entire transaction.

Senator SPECTER. What was the rate of interest which you paid?

Mr. MEESE. I paid 21 percent at some portions of the loan; 18 percent at other portions of the loan, and the interest on the interest was at the rate of about 10 percent, which was the rate that had been suggested by the Office of Government Ethics.

Senator SPECTER. When had the Office of Government Ethics suggested the rate for interest on the interest?

Mr. MEESE. That was in their report. I believe it was the end of September of 1983, when they looked at it.

Senator SPECTER. Were there any aspects of the transaction between you and Mr. McKean which were not arm's-length, in your judgment?

Mr. MEESE. No, sir, there have never been.

Senator SPECTER. Was there anything in the special counsel's report to suggest that there was anything other than an arm's-length transaction?

Mr. MEESE. No; there was not, Senator. As a matter of fact, the independent counsel's report specifically found that this was an arm's-length transaction.

Senator SPECTER. With respect to the transaction involving Mr.—well, back to the McKean transaction for just a moment.

The evidence has been, as I understand it, that you did make a comment about Mr. McKean when the issue of his appointment was considered by the Board?

Mr. MEESE. I was asked by Mr. Deaver. Mr. Deaver said something to the effect that, "You know him, Ed," and I said that I did, and thought highly of him.

Senator SPECTER. Do you recall approximately how long the consideration of Mr. McKean took before this Board?

Mr. MEESE. I would say it probably took 2 or 3 minutes, because that was not the end of the matter. The Office of Presidential Personnel then took Mr. Deaver's suggestion and did their usual checkout on the name.

Senator SPECTER. With respect to the transaction involving Mr. Thomas Barrack, what was the sequence of events with respect to the financial transaction that you had with Mr. Barrack and the issue of a Federal job?

Mr. MEESE. I have never had any financial transaction with Mr. Barrack.

Senator SPECTER. Well, the financial transaction in which Mr. Barrack was involved.

Mr. MEESE. Well, Mr. Barrack, as far as I knew at the time, had been asked by Mr. James, a mutual friend, to see if there was anyone who might be interested in buying our San Diego home. Mr. Barrack was in the real estate and land development business. Mr. Barrack did in fact find someone that was interested, a Mr. Irving Howard--so far as I knew, that was the only part that Mr. Barrack had in the transaction.

I later learned in testimony before this committee last year that Mr. Barrack also had a financial interest on behalf of another gentleman, Ted Elkin, in the transaction. I did not know that at any time prior to March of 1984. I have subsequently learned—and I do not believe I specifically knew at the time—that in fact Mr. Barrack rendered financial assistance on my behalf. He actually represented the buyer in the transaction, Mr. Howard, and I had other people representing me.

Senator SPECTER. And what was the full extent of whatever financial interest was ultimately determined that Mr. Barrack had?

Mr. MEESE. I believe he had loaned some money to one of the other participants somewhere in the nature of some $70,000 or $80,000.

Senator SPECTER. And when was that loan made, if you know?

Mr. MEESE. I do not know precisely when it was made. I think in testimony that I heard about for the first time, here in this committee last year, it was made roughly contemporaneously with the sale of the house sometime in September.

Senator SPECTER. What participation, if any, did you have in the committee which passed on Mr. Barrack for the Federal position?

Mr. MEESE. Well, Senator, initially, there was no committee that passed on his position.

Senator SPECTER. He had two jobs?

Mr. MEESE. He had two jobs.

Senator SPECTER. The first job——

Mr. MEESE. The first job was in the Department of the Interior. And there, as the independent counsel points out:

> With respect to the Interior position, the uncontradicted evidence was that Mr. Meese did not in fact contact anyone on Mr. Barrack's behalf and that Mr. Barrack received a position at Interior from Secretary Watt independent of any connection with Mr. Meese.

Senator SPECTER. And with respect to the second position, what participation, if any, did you have?

Mr. MEESE. Again, the independent counsel's report says:

> There was no evidence that Mr. Meese was involved in Mr. Barrack's securing this job or that he contacted anyone on Mr. Barrack's behalf in connection with this position.

The only even tangential connection I had was sitting on the senior staff review group when the name went through, and I made no comment or raised any objection.

Senator SPECTER. Do you recall how long that consideration took for the Board?

Mr. MEESE. I would imagine, Senator, that it probably took 30 seconds or so.

Senator SPECTER. Has anybody contended, Mr. Meese, that you knew about the financial involvement of Mr. Barrack—and you have testified that you found out about it first in 1984—has anybody made any suggestion to the contrary?

Mr. MEESE. Not that I know of, Senator, other than an implication in the so-called Common Cause report.

Senator SPECTER. And what is the nature of that implication?

Mr. MEESE. The implication was that somehow, he had been helpful to me in this sale. And of course, that is refuted by the facts, other than what is described as the inconsequential assistance in finding a buyer.

Senator SPECTER. But the implication, as you put it, arises in the context of the discussion in the Common Cause report, as opposed to any statement by Common Cause that you, in fact, knew about Mr. Barrack's financial involvement?

Mr. MEESE. Yes, sir.

Senator SPECTER. Moving on to the loans from the savings and loan, where Mr. Gordon Luce was a bank officer, Mr. Edwin Gray was a bank officer, Mr. Mark Sandstrom was a bank officer, and Mr. Clarence Pendleton was a bank officer, has there been any suggestion—did any of those individuals have anything to do with the loan that you obtained from the savings and loan, to your knowledge?

Mr. MEESE. Not to my knowledge, Senator. And in fact, Mr. Gray was not even an officer of the bank at that time. He was on a leave of absence and later resigned from the bank because he was serving in the Reagan campaign.

Senator SPECTER. Has there been any suggestion by anyone that any of those individuals had anything to do with the transaction involving you and the savings and loan?

Mr. MEESE. Not to my knowledge, Senator.

Senator SPECTER. Has anyone made any suggestion that there was anything other than an arm's length transaction between you and the savings and loan?

Mr. MEESE. Not to my knowledge, and indeed, the Independent Counsel specifically made such a finding and pointed out the fact that I paid some $43,000 in interest for the various loans over that period of time.

Senator SPECTER. Did the independent counsel make any conclusions as to the overall nature of the transaction between you and the savings and loan?

Mr. MEESE. Yes, sir, they did. They came to the conclusion that:

> The evidence does not warrant the finding that support for Messrs. Luce, Gray, Sandstrom and Pendleton was connected to the Bank's treatment of the Meeses. Our conclusion was that the Meese transactions with Great American were unrelated to the Federal appointments.

Senator SPECTER. Mr. Meese, let me take up another subject with you, or two, depending upon how much time I have remaining, and that is the issue of civil rights.

There has been a great deal of concern about the position of the Department of Justice in civil rights enforcement and the attitude that you would have if, as, and when confirmed as Attorney General about the critical question of affirmative action. And we covered this to some extent during the hearings before, but I think it is a very important subject, and I want to review it and get your current thinking on the subject.

What role, if any, do you think is appropriate for affirmative action in the enforcement of the civil rights laws?

Mr. MEESE. Senator, I think affirmative action in the enforcement of the civil rights laws is a very important and proper remedy for anyone who has been the victim of discrimination.

I think in addition to that, quite apart from those who have been victims of discrimination, I think affirmative action is a highly desirable public policy to extend recruitment efforts and outreach to bring more minorities and women into the job force and into contention for jobs that are available.

Senator SPECTER. Then, if you found the hypothetical case where the two applicants were precisely the same, but there was a difference on the basis of race or gender on a prior pattern of discrimination, would you in that situation decide in favor of affirmative action, to give the job to the person of the minority?

Mr. MEESE. Well, I think that if, in fact, there had been prior discrimination, and if they were exactly equal, I think it would be desirable then to correct the situation by such an appointment.

I must say that is a hypothetical, though, because it is rare that two people are exactly equal.

Senator SPECTER. Well, that is about all you can say about affirmative action, though.

Mr. MEESE. Yes, that is right.

Senator SPECTER. You affirm it as a principle, you try to enforce it, you look for situations where you can take action to bring a black or an Hispanic or a woman into the process where there has been studied discrimination in the past.

Mr. MEESE. Yes, sir.

Senator SPECTER. Do you have any reservations at all about your adherence to that principle of affirmative action?

Mr. MEESE. No, sir; I do not, on the basis that you expressed it there.

Senator SPECTER. Mr. Meese, there is a subject involved on the Immigration and Naturalization Service, which I consider to be important. There was a matter that I believe I had asked you about when you were here last year. I know that Senator Grassley has gone over with you a number of subjects about the forthcomingness of the Department of Justice on inquiries by Members of Congress, Members of the U.S. Senate, and I would suggest to you, as he has, that there is significant grounds for improvement on the relations between this committee and the Department of Justice. And I am glad to hear from Senator Grassley—I could not be here today—about the discussions which you had on that subject.

And the Department of the Immigration and Naturalization Service is one which comes under the jurisdiction of Attorney General; it would be under your jurisdiction if, as, and when confirmed.

We had extensive hearings last year on a case involving a man named Michael O'Rourke, who was held in a New York jail for some 5 years, and irregularity emerged when an administrative law judge was followed by Immigration and Naturalization agents in a context where that administrative law judge had stated an inclination to find for O'Rourke. And the question that I have for you is your attitude on the independence of the administrative law judge to make judicial decisions without subservience to the Immigration and Naturalization Service or the Department of Justice.

Mr. MEESE. Senator, I believe that any administrative hearing officer or administrative judge should have the protected independence to make objective and fair decisions without any hindrance or interference by any person. I cannot, obviously, speak as to the specific case to which you refer, because I do not know the facts. But as a general proposition, for example, in the information that you have cited, it seems to me that if there was suspected wrongdoing on the part of someone that would give rise to someone conducting a surveillance, that should be done by other agencies of the Government.

Senator SPECTER. Well, the facts of this case were that there had been one anonymous letter which had gone to the Immigration and Naturalization Service. The proceeding was held in Philadelphia. My special interest arose because Mr. O'Rourke's wife was a Philadelphia, PA resident. And the administrative law judge testified that it was commonplace in the Service for administrative law judges to be affected, influenced, intimidated, by the Service to make findings which were consistent with what the administration of the Service wanted, as opposed to an independent judgment. And I think it important to hear your assurance of judicial independence, and if, as, and when confirmed, this is a matter that I would like to pursue with you in terms of the allegations made by Judge Huff, which affect the Service——

Senator HEFLIN. Would the Senator yield on that?

Senator SPECTER. I do.

Senator HEFLIN. We have heard testimony before this committee regarding administrative law judges and the direct and indirect influences that agencies and departments have attempted to exert on them. The Social Security Administration has taken people off of the disability rolls, and has kept records, almost quotas, as to what administration law judges might do. And the Department of Justice has stonewalled attempts that have been taken to try to bring about independence, of our Federal administrative system.

At one time in the Federal Trade Commission—I do not think it is true now—there were some 11 administrative law judges, all 11 of them were former prosecutors for the Federal Trade Commission. It is all right for a district attorney to be a trial judge, but if you had 11 on a Bench in a circuit court, you would not want all of them being former prosecutors.

I think this is a real serious issue, and I hope you will give some attention to it. I appreciate Senator Specter bringing this instance up.

Senator SPECTER. Senator Heflin, I am prepared to yield to you, except when you make disparaging remarks about prosecuting attorneys.

Senator HEFLIN. Just the volume of them. [Laughter.]

Senator SPECTER. There can be no excess of district attorneys.

Senator Heflin has been a leader in this field, Mr. Meese, and I believe that beyond exploring the facts of a great many transactions which we have here, that this is an occasion to explore the philosophy and approach—there are issues of competency and fitness beyond the independent counsel's issues, which I think are important to explore with you. And this is a good time to get your attention, this is a good time to get some lines of approach on a great many very important problems which ought to be attended to in the Department of Justice, and have not been attended to. I think this is a matter to be pursued, as Senator Heflin has said, on this very, very important issue of independence of administrative law judges, because their opinion by the third circuit on the Social Security issue, they simply are not independent, and that is something which ought to be corrected.

Let me move on to another aspect of the issue of Immigration and Naturalization which involves practices on arrests and taking into custody, and this comes into focus with an action earlier this month where there were arrests made around the country, mostly focused in Arizona, one in Pennsylvania, involving a Guatemalan family, where the issue was brought to my attention.

There was a 25-year-old immigrant from Guatemala who came to Philadelphia with his 22-year-old wife and his 3-year-old daughter. While he was at work one day, the Immigration and Naturalization Service came in with warrants of arrest and took into custody his wife and his daughter. Meanwhile, around the country, others who were proceeded against were being brought in by summons, without the constraint of a physical arrest. When they were brought in, it ultimately worked out that $1,500 bail was posted for the man and the wife, and that was posted by someone else, hardly any real constraint for them to avoid jumping bail if they wanted to do so. The facts, as I understand them, were that Immigration and Naturalization had known from the previous September where this family was, and the arrest was made because there had not been the filing of a petition for asylum.

And when I questioned the Immigration and Naturalization officials, I was told that they do not consider it their obligation to take a look at the defense which a person has, but if the application for asylum is not filed, they are going to proceed to arrest.

It seems to me that before a law enforcement official takes someone into custody, there ought to be an inquiry not only as to the charge, but an inquiry as to the valid defense. And if there is a valid defense, that ought to be considered before a warrant of arrest is issued.

I would ask for your thinking on that subject as a matter of basic fairness.

Mr. Meese. Senator, I have a great deal of compassion for these immigration situations because I think that often, as in the case that you cited, there are a lot of extenuating circumstances of a humane nature that ought to be considered.

I would not comment on a specific case, which you understand, without knowing all of the facts, but I think as a general proposition—and I think this is the substance of your question——

The Chairman. The Senator's time is up.

Mr. Meese. May I finish the answer, Mr. Chairman?

The Chairman. You may complete your answer.

Mr. Meese. I believe that the idea wherever possible of a summons rather than the physical arrest is a very desirable practice.

Senator Specter. I shall return to this. I thank the Chair, but I will be back for my next round. Thank you.

The CHAIRMAN. Thank you very much.

We have finished round one, and we are going to start on round two. I thought we would start with about 15 minutes each for round two, and that will probably complete most of them, I think, and any questions left, we will give such time as is necessary.

Is that agreeable to you, Joe?

Senator BIDEN. Yes; this is like an Olympic event, Mr. Meese, but there are only 3 rounds, not 10.

The CHAIRMAN. Senator Laxalt, do you have any questions?

Senator LAXALT. No questions.

The CHAIRMAN. Senator Hatch, do you have any more questions?

Senator HATCH. I may, but not right now. I will reserve my time.

Senator LAXALT. We will each reserve our time, Mr. Chairman.

The CHAIRMAN. All right. The distinguished ranking member, Senator Biden.

Senator BIDEN. Mr. Meese, I realize that we have covered or are likely to cover the same subject matter more than once. We have done that in the first round, and the second round is going to produce the same thing. One of the problems both for you and for us is that really, to go through this in a way of continuity and to avoid repetition would essentially require us to each take an hour and a half or so, and that would not work very well in terms of our fellow Senators sitting around that long to listen to each of us without having a chance to say anything.

So, I apologize for the repetition, but I am going to try to, although covering the same subject matter, do it from a slightly different perspective, and ask questions that have not been asked so far.

Let me first of all recognize Attorney General Saxby in the audience. How are you, Senator? It is good to see you. I think one of the most memorable comments I ever heard, which General Saxby would not like to have made reference to in the context of this hearing, was during the Watergate days, when he said that a particular person, not knowing what was going on, was a little like the piano player in the brothel not knowing what is going on upstairs. And I am not sure—what worries me a little bit in this hearing is that some of the things you have said are a little bit like that piano player, not knowing what is going on upstairs. But you have explained to me, and I am tempted to believe you, that you all operate a little differently than we disorganized Democrats do. I mean, there are certain things you have made clear to me that I believe you on the debate-gate questions. I found it impossible to believe, as disorganized as we Democrats are, that you would not have had your finger in everything that was going on in the campaign. That is how we Democrats work—we put our fingers in everything that goes on in the campaign, and nothing goes very well. But you have convinced me, at least on the so-called Carter-Gate question, that you were completely segregated from that debate team out there, and it is possible.

Well, let me take you to specifics. Back to McKean—a name you will never forget in your whole life, and I doubt that you will have your grandchildren named after.

On November 4, 1982, Mr. McKean sent you a letter, which is essentially an agenda, a suggested agenda. Let me make sure I have that letter. In that letter, he sets out—he says, "I am planning to meet with you as you have scheduled at 6 p.m. Monday, November 8, in Washington. In preparation, I have attached certain enclosures. Also, I thought it helpful that we set out a tentative agenda," and then he lists by paragraph number.

I would ask unanimous consent that this November 4 letter from Mr. McKean be placed in the record as if read.

The CHAIRMAN. Without objection, so ordered.

[The following was received for the record:]

JOHN R. MCKEAN C.P.A.
SIMON S. TENG C.P.A.

JOHN R. MCKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE 788-2400

CLIFFORD KUPPERBERG C.P.A.
TERENCE J. CALLAGHAN C.P.A.

November 4, 1982

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

Dear Ed:

I am planning to meet with you as you have scheduled at 6 p.m. Monday, November 8, in Washington, D.C. In preparation I have attached certain enclosures.

Also, I thought it helpful that we set out a tentative agenda.

1. Note Renewals (attachments)

2. Interest Billing (attachments)

a.	Promissory Note #1	-	$40,000			
	Interest -					
	7/1/81 - 9/30/81	-	21%	($700/mo. x 3)	2,100	
	10/1/81 - 12/31/81	-	18%	($600/mo. x 3)	1,800	
						$ 3,900
b.	Promissory Note #2		$20,000			
	Interest -					
	1/1/82 - 9/30/82	-	18%	($300/mo. x 9)		2,700
c.	Promissory Note #1	-	$40,000			
	Interest -					
	1/1/82 - 9/30/82	-	18%	($600/mo. x 9)		5,400
						$12,000

3. Reimbursement to John R. McKean Accountants for Virginia taxes 1981 advanced by our office (attached). (Amount of $360.)

4. United States Postal Board of Governors term of office attachment - (Malek nomination now withdrawn).

5. Client issue previously discussed (NLRB).

6. Need to obtain escrow papers on sale of San Diego property (Meese).

7. Need to discuss capital loss and related loans for 1982 transactions per telephone discussion on November 1, 1982. Purchase price $15,000.

I look forward to seeing you. It is important that the 1982 income information be gathered so that I can project your taxes. The interest items above and Ursula's earnings as well as the escrow may significantly affect your 1982 picture.

Very truly yours,

John R. McKean

JRMcK:dkn

Edwin Meese III
567 30 8505

9482

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET. SUITE 1200
SAN FRANCISCO, CALIF. 94111

June 30 19 82

11-35
1210

PAY TO THE ORDER OF Department of Taxation Richmond Virginia $ 360.00

[illegible] 360 [illegible] CTS DOLLARS

BANK OF AMERICA
MARKET - VAN NESS BRANCH
1525 MARKET STREET
SAN FRANCISCO, CALIF. 94103

FOR

⑈009482⑈ ⑆121000358⑆ 02992⑉00391⑈

U.S. POSTAL SERVICE

BOARD OF GOVERNORS

NAME	TERM EXPIRES (December 8)	PERCEIVED PARTY AFFILIATION
Timothy L. Jenkins	1982	Republican
Robert L. Hardesty	1983	Democrat
William J. Sullivan	1984	Democrat
George W. Camp	1985	Democrat
John R. McKean	1986	Republican
Paula D. Hughes	1987	Republican
David E. Babcock	1988	Independent
Peter Voss	1989	Republican
Vacancy (Frederic Malek Nominated, Not Confirmed)	1990	Republican

September 30, 1982

Amount: $40,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date for value received jointly and severally promise to pay to JOHN R. McKEAN, Trustee, or order, at San Francisco, California the sum of FORTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of 18 percent per annum.

Payments of interest are to be made not less than annually at the rate(s) recited herein.

Edwin Meese III
EDWIN MEESE III

URSULA MEESE

9 Nov 82
DATE

Nov 82
DATE

September 30, 1982

PROMISSORY NOTE #2

Amount: $20,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date of value received jointly and severally promise to pay to JOHN R. McKEAN, Trustee, or order, at San Francisco, California the sum of TWENTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of 18 percent per annum.

Payments of interest are to be made not less than annually at the rate(s) recited herein.

III

EDWIN MEESE III

[illegible]

DATE

URSULA MEESE

[illegible] Dec 82

DATE

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET SUITE [illegible]
SAN FRANCISCO, CALIFORNIA [illegible]
TELEPHONE [illegible]

November 3, 1982

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 1 - $40,000 as computed below:

7/1/81 - 9/30/81	-	21%	($700/mo. x 3)	2,100
10/1/81 - 12/31/81	-	18%	($600/mo. x 3)	1,800
				$3,900

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET SUITE [illegible]
SAN FRANCISCO, CALIFORNIA [illegible]
TELEPHONE [illegible]

November 3, 1982

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 2 - $20,000 as computed below:

1/1/82 - 9/30/82	-	18%	($300/mo. x 9)	$2,700

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET SUITE [illegible]
SAN FRANCISCO, CALIFORNIA [illegible]
TELEPHONE [illegible]

November 3, 1982

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 1 - $40,000 as computed below:

1/1/82 - 9/30/82	-	18%	($600/mo. x 9)	$5,400

Senator **Biden**. He sets Nos. 1, 2, 3, 4. No. 1 is "Note Renewals"; 2 is "Interest Billing"; 3 is "Reimbursement to John R. McKean Accountants for Virginia taxes," et cetera. And then, No. 4, "United States Postal Board of Governors term of office" and there is an attachment.

Now, do you recall seeing that letter?

Mr. **Meese**. I do not have a specific recollection, but I have no doubt that I did. I have seen the letter since that time.

Senator **Biden**. How did personal, financial, or just simply private correspondence to you—how was that handled within your office?

For example, in my office—which is not unknown—if the bank calls and says, "You have overdrawn your checking account," they know that there is one person in my office to call if they cannot get me. I do not like my secretary, or the receptionist, knowing I have overdrawn the account $120; it is kind of embarrassing. So there is one person that they know to call if I overdraw my checking account, or if my wife were to do that—although she does it much less than I do.

And if there is a letter—if, for example, when I pay off the note to Girard for my son's tuition, that gets sent, and there is one person in my office. That does not get opened in the mail room.

Mr. **Meese**. Senator, matters relating to personal finances would normally come to my home, as I believe that letter from Mr. McKean did.

Senator **Biden**. Now, is it possible that you would not get to see a letter that came to your home?

Mr. **Meese**. No; I am sure that I probably did—well, it is possible, yes, but it is not probable.

Senator **Biden**. Well, I mean it is not probable. Now, did you find anything—did it smack of being in any way improper, or did it make you twinge a little bit that here, the fellow is talking about refinancing your debt you owe him and ways to deal with it, and at the same meeting, he has an agenda and he wants to talk to you about his appointment to a full term on the Postal Board? I mean, didn't that——

Mr. **Meese**. Senator, I think that that was explained in the independent counsel's report, that he talked to me at that meeting as a courtesy to let me know what he had asked Mr. Deaver to do, and as the independent counsel says, "Our investigation uncovered no evidence that Mr. Meese spoke to anyone or took any action to assist Mr. McKean in obtaining a longer term."

Senator **Biden**. Look, Mr. Meese, I have concluded that you are not a criminal, and you have not done anything wrong. That is my personal conclusion. But that is not what I am asking about here. I am trying to get back to the thing I went at yesterday to satisfy myself, and that is, what you consider proper conduct and not proper conduct. And my question does not relate to whether or not you in turn did anything. I am not even asking you what you did. I am asking you what you thought when you got that letter, and now looking at the letter in retrospect, do you think it appropriate that a man who is coming to see you to help you, assist you, demand of you, however you want to characterize it, that you refinance certain financial obligations you owe to a trust of which he is a trustee, and I expect has a financial interest, and he says, "And by the way, I want to talk to you about a job. I am going to inform you about the job," or whatever. Just the letter. I am just trying to get to the letter.

Mr. MEESE. Well, I think that from a particular perspective, you could say he was putting down a random series of things that he wanted to talk about. I would say from a certain perspective that it would be an inopportune listing of those particular items. At the time, I looked at it in a very cursory manner and did not take any affront to it, because I really looked at the letter, I am sure, very briefly, and then used it, if I brought it to the office at all, because I was anticipating the meeting with him in the following week.

Senator BIDEN. Do you understand why a fellow like me——

Mr. MEESE. Yes, sir.

Senator BIDEN [continuing]. Would be offended by that?

Mr. MEESE. Well, at least I could understand why a question might be raised in hindsight, yes.

Senator BIDEN. Well, let me ask you—let us assume that you were in a situation where, as Attorney General, you have one of your deputies working close to you whose responsibility is to decide whether or not the Department should pursue a possible antitrust action against an individual or a corporation, and that individual; your subordinate, has a financial arrangement with that institution or individual. What would you expect that subordinate of yours to do?

Mr. MEESE. I would expect that that subordinate would advise me of that fact, or advise the intervening official, if that were the case, and in the Justice Department would see that that particular case would be given to someone else.

Senator BIDEN. What would you do to that person if they did not advise you of that as Attorney General?

Mr. MEESE. Well, it would depend on the circumstances, but under most circumstances I would think, based upon the rules of conduct of the Department which I think are in effect, I would certainly counsel that person to give up the case or to do whatever was necessary to make amends.

Senator BIDEN. Forget about the rules. What do you think should be done?

Mr. MEESE. I think I would inquire into the circumstances of why that person did not inform the right people and give the case to someone else.

Senator BIDEN. Well, I would fire him.

Mr. MEESE. Well, I would find out what the facts were first.

Senator BIDEN. I would not, if he in fact had a financial interest, a clear financial interest, and it was an action he was responsible for following through on as to what should be done to pursue an antitrust action against the institution with whom he had a financial interest, or individual, and he did not tell anybody, then I would really, really, really—even if it was a totally fine woman or man, it sure as hell says something about his judgment.

Mr. MEESE. Well, Senator, I would not disagree with you as to the ultimate action that I might take, but I do think I would find the facts first.

Senator **Biden**. Mr. Barrack—I am aware of your contention, supported by many of the things pointed out in the Stein report, that you did not know, really, much about Mr. Barrack, and you only learned after the fact what the totality of Barrack's interest was, what action he took with regard to your California home. And my question relates to—and I am going over old ground that Senator Specter mentioned, but I think just slightly different detail.

At one point in time, there was a sales agreement for the sale of your home—regardless of who arranged it—but the sale of your home—to whom?

What was the first contract of sale that you signed? At some point, didn't you sign a sales agreement with somebody, some buyer?

Mr. **Meese**. Do you mean going back throughout the whole history of the sale?

Senator **Biden**. Yes.

Mr. **Meese**. I think we did two or three times——

Senator **Biden**. What was the first time, do you remember?

Mr. **Meese**. I cannot remember, but I think we did sign with a potential buyer sometime in 1981.

Senator **Biden**. OK. How about with the ultimate buyer?

Mr. **Meese**. With the ultimate buyer, we signed an agreement—or at least, I did—I believe at the end of August of 1982. That was with Mr. and Mrs. Howard, I believe.

Senator **Biden**. With Mr. and Mrs. Howard. What was the sale price contained in that sales agreement, and what did it include?

Mr. **Meese**. I think that in that agreement the sales price was, if I remember correctly, $300,000. It was not signed by Mr. Howard. I do not believe the agreement had been signed by him yet.

Senator **Biden**. Whom was it signed by?

Mr. **Meese**. By me. I signed the agreement.

Senator **Biden**. By you.

Mr. **Meese**. Yes; it was rendered to me by the person representing me and by the savings and loan company.

Senator **Biden**. All right. For a sale price of $300,000?

Mr. **Meese**. Yes, sir.

Senator **Biden**. Now, what was included in that sale—the house and the adjacent lot, or just the house?

Mr. **Meese**. The house and the adjacent lot.

Senator **Biden**. You signed a contract memorializing that agreement. You signed a contract——

Mr. **Meese**. No; I signed the papers. There was still negotiation going on. I was in San Diego briefly on this particular day.

Senator **Biden**. How do you characterize the papers you signed?

Mr. **Meese**. It was, I think, a conditional sales contract or something like that. I signed the documents and left them in the custody of my attorney, who was continuing the negotiation of the sale.

Senator **Biden**. OK. Did you sign any escrow instructions?

Mr. **Meese**. I may have. I am not sure.

Senator **Biden**. And who signed eventually on behalf of the buyer? Who was the buyer?

Mr. **Meese**. I do not know that I have ever seen the ultimate—I am sure it is in the documents here—but it was my understanding that it was Mr. Howard.

The **Chairman**. The Senator's time is up.

Senator **Biden**. My time is up, but let me just finish this one point. Did he sign the conditional sales agreement at $300,000?

Mr. **Meese**. No; the ultimate negotiated price was $307,000, I believe.

Senator **Biden**. I know that. But I want to know whether or not he signed at $300,000.

Mr. **Meese**. I do not know.

Senator **Biden**. My time is up. I will come back.

Senator **Hatch**. Mr. Chairman, may I make just one comment?

The **Chairman**. The distinguished Senator from Utah.

Senator **Hatch**. Mr. Chairman, I realize that I made some relatively subtle points yesterday with regard to the issue of "appearance of impropriety." I read The Washington Post this morning, and they indicated that I had said that the "appearance of impropriety" standard was "absurd and grotesque."

Rather, what I did say was that such a standard is absurd and grotesque when the fact of such appearance is to be determined by those individuals most suspicious of the innocence of the individual in question.

That is a clear difference from what was reported in the paper this morning. The difference is a major one.

It is the difference between an "objective or reasonable man" standard of determining the appearance of impropriety and a purely subjective standard.

That is why I gave the press my written statement so that this would not be misconstrued; I felt it was misconstrued, however, in that article this morning.

That was the point I was making. I thank you, Mr. Chairman, for giving me the chance to make that comment.

Sometimes these important legal subtleties are important but are too difficult to follow. And I do not blame anyone for not being able to do so.

The **Chairman**. Did you complete your statement, Senator?

Senator **Hatch**. I have, Mr. Chairman. Thank you.

The **Chairman**. I would like to urge all the Senators on both sides to try to remain at the hearing as much as possible. Yesterday and today, too, we have had duplication after duplication. We have not only duplicated what was brought out last year and again this time, but even yesterday and today we have had duplication. Now, this is taking the time of a lot of important people. I have other business to attend to, the other Senators here have business to attend to, and we would like for every Senator if possible to attend these hearings and confine their questions to those that have not been asked before. You have a right to do it, but why waste time?

So I would urge the Senators from now on to try not to duplicate.

The distinguished Senator from Iowa, Mr. Grassley.

Senator **Grassley**. I do not have any questions at this time, Mr. Chairman, but whatever necessary protection I need just in case I have some come up between now and the time Mr. Meese leaves, I would like to reserve that right. Some of the questions I was going to ask this round have already been responded to.

The **Chairman**. Thank you.

Senator GRASSLEY. So I will be protected?

The CHAIRMAN. Yes; that will be all right to reserve your time. But if you reserve your time, we will go to Senator Specter next.

Senator SPECTER. Thank you very much, Mr. Chairman.

Mr. Meese, I would like to go back to the question when my time had expired, on the subject of the least possible restraint, bringing people in by summons as opposed to warrant of arrest, which I think is a matter of really great significance.

Two things, I think you said as a generalization—and I do not expect you to deal with the specific case of a Guatemalan family in Pennsylvania—but one thing, as I understand it, you said was that you do believe that the law enforcement official, whether he is a DA or the Attorney General of the United States or the Immigration and Naturalization Service, ought to consider valid defenses as well as the charge in coming to a conclusion as to whether there ought to be the prosecution brought forward.

Mr. MEESE. Yes, sir.

Senator SPECTER. And that there ought to be the minimum restraint and to proceed by summons unless there is actual reason to believe that the individual is likely to flee so that you need them in custody, or bail, to guarantee their appearance at trial.

Mr. MEESE. I think as a general rule that is correct and also reflects economy in the use of the manpower within the Department, as well.

Senator SPECTER. The other point that I would ask you to consider is on these proceedings for asylum—where a man from Guatemala makes an allegation, for example, of torture—and I interviewed this man myself and saw corroborating burns on his arms which would support his contention of torture—that there be an in camera proceeding to make this claim so that it is not a matter of public record, that is then known to the Guatemalan authorities, for example, so that if he is returned there, there is the issue of retribution, that there be a proceeding devised in the Department of Justice which would accommodate to that very realistic concern about people making claims which may subject them to retaliation and retribution.

Would you agree with that principle, Mr. Meese.

Mr. MEESE. I would agree with that principle, Senator. I view that as a very helpful suggestion as to the process.

Senator SPECTER. Mr. Meese, let me pick up on a line which was approached by Senator Mathias on the Office of Juvenile Justice and Delinquency Prevention, which comes within the purview of the Juvenile Justice Subcommittee of Judiciary, which I chair, and that is the issue of funding.

There has been an effort made, I think rather significantly, by the Office of Management and Budget to eliminate the Office of Juvenile Justice and Delinquency Prevention. And each year, the Congress has reauthorized $70 million. And I would like your response or your attitude about maintaining the Office of Juvenile Justice and Delinquency Prevention to that modest extent.

Mr. MEESE. Senator, as you know, I believe that it could be agreed that I was instrumental in arranging the administration's concurrence with you and Senator Hawkins and others, who were particularly anxious to have the Juvenile Justice Act reauthorized, and to agree to funding in the amount that you mentioned. And I would be interested in continuing that as long as it is the will of Congress that this office continue.

There have been various viewpoints as to the efficacy of that office, but I certainly think that under its present leadership, that office has been doing some very excellent things, and I would agree to seek that funding from the administration.

Senator SPECTER. Mr. Meese, a recent addition, and a topnotch man, to my office, a lawyer named Eric Richard, chaired a Subcommittee on Domestic Surveillance on the Committee on First Amendment Rights on the section of individual rights and responsibilities of the bar association. And I have reviewed the report and ask only if you would be willing to commit to consider the recommendations made by this bar association committee?

Mr. MEESE. Yes, sir, I would.

Senator SPECTER. Mr. Meese, let me now come to the final subject that I want to ask you about, which I consider to be the most important subject of all for a man under consideration for Attorney General of the United States. That is the issue of law enforcement in this country and the issue of leadership on law enforcement in this country. And it may be somewhat anomalous that we are so far into these proceedings and in the second round of questions before that question arises.

And I would disagree with Senator Heflin about district attorneys and how many there ought to be and where they ought to be, and even more so with assistant district attorneys. And I know that your background in law enforcement goes back to 1958, 1959, when you were an assistant district attorney in Alameda County about the same time I was an assistant district attorney in Philadelphia County. And in the course of your work as domestic counselor, you and I have had occasion to have many discussions about law enforcement and about the leadership role and about where the Federal Government is heading. And we have not always agreed because of budget limitations, principally, and our discussion has been extensive as to the role of the Federal Government vis-a-vis the State governments and how we provide for prompt trials so that defendants are not on bail, committing other offenses, or defendants are not in jail, being denied the constitutional right to a speedy trial, and how we get the tough sentences for tough criminals, and what we do about the jail system.

I would like to explore with you for a few moments this morning what I consider to be a breakdown in the system of law enforcement, as represented by the case involving Bernhard Goetz in New York City, as a signal about the public's loss of confidence in the system of law and order and justice in this country, in an effort to see what your thinking is as to where you would, if, as, and when confirmed as Attorney General of the United States, take a leadership role on this subject.

I personally believe that the public approval, as reflected in the polls and otherwise, of what Mr. Goetz has done poses a very great danger in our system of law enforcement in this country, if we are to have a man not even stand trial, because as you and I know, a grand jury is not designed to test a self-defense theory. A grand jury is supposed to make a determination as to whether there is probable cause to proceed to an indictment with the trial being the appropriate time to have a consideration of a case on self-defense.

And I have grave concern that if the Goetz case stands where it does not—and I have written to the attorney general of New York, asking him to supersede Mr. Morgenthau and to resubmit the case to the grand jury, as an attorney general can under New York law, as under the law of most States. But I am concerned about where we are heading in this country and what the Senate Judiciary Committee is going to be doing, and what the Department of Justice is going to be doing in this country on this issue of violent crime.

I would like to ask you in general, and I have some specific questions, what do you perceive to be the leadership role—let me back up a minute and ask you an ancillary question.

What is your response—I do not expect you to get into the Goetz case specifically—but what is your feeling as to the lack of confidence of the American peoole in the ability of the criminal justice system to provide law and order and justice—and I emphasize "justice" as well as "law and order"?

Mr. **Meese**. Senator, as you suggest, it would not be proper for me to comment on the *Goetz* case, which is still before the courts and may well even be considered, at least, by Federal officials.

But in general, I think that the *Goetz* case and the public reaction to it is a reflection of the frustration that many citizens feel, and their lack of confidence in government's ability to exercise its primary responsibility, which is to protect the lives and property of the citizens of our country.

Therefore, I agree with you that there is a serious problem for law enforcement and criminal justice agencies at all levels which ought to be addressed, and which I would certainly intend to address as Attorney General, if confirmed by the Senate.

Senator **Specter**. Mr. Meese, you have said that that matter might come before you if, as, and when confirmed, might come before the Justice Department. There has been some suggestion of a civil rights violation, possibly, in *Goetz*. And I think that while that is a possibility, the more fundamental issue remains with States to enforce the criminal laws of this country. It is not a matter for Federal involvement by and large.

But what do you see as to the leadership role of the States, and take the question which a number of us were battling about last year, on seed money by the Federal Government, induce matching shares by the States on the prison issue, where we are so short of prisons in this country?

Mr. **Meese**. I see that the Federal Government can take a position of leadership. In terms of financial resources, many States themselves, including your own State of Pennsylvania, have made great strides in terms of prison construction, and it really has provided, if you will, a prescriptive package that could well be emulated by other States in the Union.

I feel that the Federal Government has a particular responsibility to provide information and to provide a clearinghouse for information to be distributed throughout the country on better ways of handling the corrections problem, which is a facet of this whole thing, as you have pointed out, so that other States can have the benefit of the experience of very exceptional achievements such as those that Pennsylvania, and now California and other States, have managed.

I also think that the Attorney General can use his position to exhort State legislatures, local governments, to take more of a responsibility to put their local resources behind the criminal justice program.

We also have ways other than straight financial grants in which this administration has provided facilities, in some cases, fully built correctional facilities, to State and local governments, from unused Federal and military facilities.

And I think one particularly important way in which the Federal Government can match the effort of local and State governments is to provide Federal lands. One of the problems is not just getting the money for prisons, but the fact that very few people like to have prisons located in their community, for some reason.

It is in these categories where I think the Federal Government can utilize some of the Federal lands in more remote areas as a means of providing the land and then have the State and local government provide the building, using these economical blueprints and so on, which the Federal Government could then distribute.

Senator SPECTER. Mr. Meese, you have been very helpful on the Justice Assistance Act, which is a modest step forward, enacted last year, providing $125 million. I would ask you publicly as I have asked you privately, to consider legislation which I introduced last year, Senate bill 889, which would allocate 1 percent of the Federal budget over a 10-year period, $10 billion a year for 10 years, or $100 billion, to really take a major Federal initiative on crime. And let me ask you sort of a loaded question. Would you be willing to consider being the Cap Weinberger of the Department of Justice and lead a battle for Federal funding on domestic security?

Mr. MEESE. Senator, I would be willing to consider what Federal resources should and could be made available for local governments. However, I would suggest that the experience in the past of large-scale Federal funding for what are really local and State responsibilities has not proved too satisfactory.

The Law Enforcement Assistance Act, which I think did many good things, contrary to some of its critics, and provided a number of benefits, would have been a lot better if it was more of a partnership program and if more effort really were forthcoming from State and local governments.

I really believe that there are adequate resources at the State and local levels to provide the level of law enforcement that is necessary, if those governments had their priorities correct as to what the primary functions of government are.

I also feel that there are some things the Federal Government can do. I think there is a real role for the Federal Government to supplement and complement State and local governments, which have the primary responsibility for the prevention and control of crime.

That is why, for example, this administration has undertaken a much greater effort on the interdiction of drug supplies into this country; has done more overseas to stop the flow of drugs from their source; has instituted a great many support and assistance programs for State and local government, including the Criminal Justice Act that you referred to. We are continuing our efforts to improve the training of State and local law enforcement authorities so that they can do a better job in the management of resources, as well as in the actual efforts to prevent and control crime.

So, while I am not either tremendously optimistic about or enamored with a major Federal funding program, because I do not think that is where the problem is, I would certainly undertake a major Federal leadership program in controlling violent crime and assisting local law enforcement, which I hope would be comparable to the very excellent efforts that Secretary Weinberger has made in the defense area.

The CHAIRMAN. Senator, your time is up.

Senator SPECTER. Thank you, Mr. Chairman.

Thank you, Mr. Meese.

The CHAIRMAN. The distinguished Senator from Ohio, Senator Metzenbaum.

Senator METZENBAUM. Mr. Chairman. with your permission, I think I would like to pass at this time, until such other Senators have concluded their inquiry, so I might have an extended period of time for the purpose of interrogating Mr. Meese.

The CHAIRMAN. Thank you.

The distinguished Senator from Vermont, Mr. Leahy.

Senator LEAHY. Mr. Chairman, I have been, along with Senator Durenberger, chairing a meeting of the Intelligence Committee all morning. As a result, I have not heard what the questions are here. So I would like to pass and reserve my time for sometime after lunch. That will give me a chance to find out what questions have been asked, and I will not be here asking the same questions that might have already been asked, and that may speed things up a bit.

The CHAIRMAN. So you would like to pass for the moment?

Senator LEAHY. I would like to pass for the moment, so I can just make sure I am not asking the same questions all over again.

The CHAIRMAN. Well, I think most of the questions have already been asked anyway, Senator.

The distinguished Senator from Alabama.

Senator LEAHY. Is that the chairman's very subtle way of telling us all to shut up? [Laughter.]

Senator HATCH. I think that is a fair assessment, yes.

The CHAIRMAN. The Senator from Alabama, Mr. Heflin.

Senator HEFLIN. Mr. Meese, let me ask you one or two questions about the moving expense matter, and the Presidential Transition Trust.

What was your position or title in the Presidential Transition Trust?

Mr. MEESE. I had no position or part of the leadership of the fund that was known as the Presidential Transition Trust.

Senator HEFLIN. You were just merely a consultant to the President Transition Trust?

Mr. MEESE. I was a consultant to the Reagan-Bush Task Force, which was funded out of the Presidential Transition Trust Fund.

Senator Heflin. In the Presidential Transition Foundation, did you have a position or a title?

Mr. Meese. Yes, sir; I was a Director of that Foundation, which was incorporated, that Fund, and I was also nominated the President of that Fund.

Senator Heflin. Concerning the Presidential Transition Trust, where the moving expense money came from, and later, the records reflect, a consulting fee, did you at any time occupy a fiduciary relationship to that trust?

Mr. Meese. No, sir.

Senator Heflin. Regarding the Barrack matter, there was confusion whether the sale of the House took place in September or December. We also discussed what the Senior Staff Personnel Committee did, and I believe you told us that the Senior Staff did nothing on the Interior job, but that Barrack's appointment to the Commerce position did come before the Senior Staff Personnel Committee. Is this correct?

Mr. Meese. Yes, sir. It came up in passing at one of the meetings, it is my understanding that it did.

Senator Heflin. What did you do relative to that appointment?

Mr. Meese. My recollection is that I did nothing.

Senator Heflin. The Senior Staff Personnel Committee arises in all matters in which people who did you favors, or else that you had business relationships with, got favors or Federal jobs. Was it formalized? Tell us what the Senior Staff Personnel Committee did. You told us the other day that it did not really vote; that in effect, it negated appointments in the reviewing.

Was it a vetoing committee, or what?

Mr. Meese. Senator, it was essentially a review group. It was not even a committee. There is no formal group known as the Senior Staff Personnel Committee. That has been a short-hand term used in the independent counsel's report.

Basically, what it was was the three senior members of the White House—Mr. Baker, Mr Deaver and myself—sitting down with the Director of Presidential Personnel and reviewing the names of people who had been proposed by Presidential Personnel who, unless we did raise an objection, would in the normal course of business then go to the President for his final decision, approval, and nomination.

Senator Heflin. Were there minutes taken during the meetings of the committee?

Mr. Meese. There were no minutes as such. In other words, no minutes would be distributed to us. There was usually a listing of the positions and the people who were being proposed by Presidential Personnel.

There were informal notes, taken usually by an assistant to the Director of Presidential Personnel, for his own followup, but there were no minutes that were formal.

Senator Heflin. Well, did you have formal votes?

Mr. Meese. No, sir; we did not have formal votes. Usually, the names would be presented to us and if somebody had a comment or an objection, then that would give rise to a more extended discussion, and occasionally, the names would be sent back to Presidential Personnel, either for further checking, or on occasion, for new names to be presented.

Senator HEFLIN. Well, now, one of the things that people are accusing you of is the failure to recuse yourself, or say that, "I should not take part in this," or that you should have made known whatever your relationship was to the individual being considered.

Did any of the members recuse themselves in other situations? What would you do? What did the other members do?

I am trying to see how this operated, and whether or not, to the extent it occupied some sort of a position that necessitated, or that there should have been some action by a member to remove himself from participation. I am a little confused. Are there any Executive orders or directives other than general appearances of conflicts of interest or appearance of matters that dictate what should be done?

Mr. MEESE. No, sir; I do not believe that there are. This was, as I mentioned, an informal body of people acting for the institutionalized Presidency to make suggestions to the President, who was the official appointing authority.

Recusals or votes, or the formalities that you would usually have in a more formal board, were not the rule for this particular entity, as I think is pointed out in the independent counsel's report.

As a matter of fact, in the particular instance of Mr. McKean, Mr. Deaver, who was in a comparable position to mine, did not think of recusing himself, either. So it was not the norm that people would recuse themselves.

I might say, if I may, that many of the people who came through that group were, of course, known to all or some of the members of that group because we had participated in other governmental activities with them, or in the campaign, or they were known from previous associations.

Senator HEFLIN. Now, on the Barrack matter. In response to Senator Specter, I gather you said that Mr. Barrack was not representing you?

Mr. MEESE. No, sir. He was the one who found a buyer, and then represented that buyer in the negotiations with the people who were representing me.

Senator HEFLIN. The appearance concerns me of what could happen under a complicated set of circumstances. A person who wants to pass a gratuity or a bribe could purchase a piece of property from a person, either sell it, or loan him money, and then, forgive the loan, which annures as a benefit back to the original seller, providing that market prices were not in keeping

Was there any appraisal done of the value of the California property?

Mr. MEESE. Yes, sir; there were several appraisals, and all of the appraisals put the combined property of house and lot at a value of $330,000 or higher, all of which was materially higher than the purchase price for which the house was actually sold.

Senator HEFLIN. Now, according to a reading of the independent counsel's report, originally, $300,000 was the agreed purchase price. Supposedly, because of some debts, interest, and other circumstances the price was raised an additional $7,000. In testifying to

Senator Specter, you said that price was open to negotiation between the lawyers.

What is your exact recollection of that? Was $7,000 added because it was needed, or was this something that was the result of negotiation?

Mr. **Meese**. To my understanding, Senator, it was in a position of negotiation. I had no knowledge of any of these facts because I was back here in Washington when they took place.

I do recall that I was informed by telephone that when they counted everything up—and there were really three parties to the negotiation—there was my former law colleague who was representing me; there was the Great American Savings Bank, which held the mortgages; and there was, of course, the purchaser, Mr. Howard, who was being represented by Mr. Barrack. In the course of the negotiations, after the savings and loan had counted up the mortgages, the interest due, and everything else for the closing, they found that the $300,000 would not be quite enough to extinguish all of our debts. They, therefore, suggested in the negotiations that they would be willing to lower the loan that they were making to Mr. Howard, the interest on the loan, because interest rates were falling at that point, if he would be willing to pay the full price of $307,000, or $307,500.

These were all things that were being done in California. The only thing I knew about it was after those negotiations had been concluded and they had fixed the price at $307,000 or whatever it was. I was telephoned to say that was what they had concluded, would that be all right with me, and I said yes.

Senator **Heflin**. Well, you were, of course, an indirect beneficiary of the additional negotiation under that scenario of facts. Was it also a benefit that the savings and loan association had in order to get their matters clarified?

Mr. **Meese**. Yes, sir; I think that is where the idea originated from, and it was also, of course, a benefit to Mr. Howard, the buyer, because he got a lower loan interest.

Senator **Heflin**. Your testimony is that you knew nothing of the arrangement of the loan between Barrack and Elkins, or the arrangement between Elkins and Howard, and that you knew nothing about the price increase until after it had been agreed upon.

Mr. **Meese**. Yes, sir; I knew nothing about the increase in the amount until after it had been agreed upon, but in the course of and contemporaneous with the sale of the house. As far as the loan from Barrack to Elkins and Elkins' participation with Howard in the transaction, I did not learn about that until Mr. Barrack testified before this committee last year, March of 1984.

Senator **Heflin**. All right. Now let me go to the issue of your attorneys' fees. I believe you testified that you have entered into an agreement through oral discussions with your attorneys that if the court were to determine that their charges on an hourly basis should not be paid, that they were willing to accept whatever the court said.

Now, are those discussions in writing, or is that just an oral understanding that you have with your attorneys?

Mr. **Meese**. Senator, first, let me clarify that to say that obviously, whatever arrangement I ultimately make with the attorneys, or whatever the ultimate handling of the legal fees are, is dependent in part on what the court determines and the language of the court's order. And I use by way of reference what the court did in the agent orange case in New York, where they flatly used their inherent powers to fix the fee. If, of course, the court does that, that matter is very clearly settled.

The agreement that I have, a copy of which has been made available to the committee, says that, "If, however, the court does not reimburse the fees, or if the court nonetheless substantially denies payment," then I would be obligated for the amount to my attorneys. But on the other hand, the attorneys have indicated that if the court fixes some reasonable amount, lowers the hourly fee or whatever it is and fixes a reasonable amount, they will be willing to accept that as full payment for their services.

Senator **Heflin**. Would you read that again for me?

Mr. **Meese**. Yes, sir; it says:

> It is contemplated that if the conditions of the section of the Ethics in Government Act that is applicable are satisfied, we will request the appropriate division of the United States Court of Appeals for the District of Columbia Circuit to award reimbursement for the fees and expenses incurred during this engagement. If, however, such conditions are not met

that would have precluded this

> Or if having been met

which they were—

> The court nonetheless were substantially to deny payment thereunder, we will bill you for our services.

Senator **Heflin**. And your agreement after that is that they will accept what the court establishes. And that came about through oral discussions after the completion of the Stein Report?

Mr. **Meese**. Yes, sir; that is an oral discussion with the attorneys, because we cannot fix on a final settlement until such time, obviously, as the court has acted. But I think it makes clear the intent of the attorneys to abide by the order of the court, providing, of course, it is a reasonable award of fees.

The **Chairman**. The Senator's time is up.

The distinguished Senator from Utah.

Senator **Hatch**. I reserve the balance of my time.

I presume that all Senators are through asking questions except for Senator Metzenbaum.

Senator **Heflin**. I am not, no.

Senator **Hatch**. Oh, I am sorry.

Senator **Metzenbaum**. Mr. Chairman, at this point, I would like to ask unanimous consent, since it is 12 o'clock, that the Senator from Alabama be permitted to go on until we adjourn, or until such time as he has concluded.

Senator **Heflin**. Well, I have an obligation very shortly.

The **Chairman**. OK. No objection on that point.

Does the Senator from Alabama want to proceed longer, then?

Senator **Heflin**. I would like to continue a bit longer, because I have some other questions.

The **Chairman**. All right.

Senator **Hatch**. Forgive me, Senator Heflin. I thought you were through. I did not want to cut you off.

Senator HEFLIN. No, I am not through.

On the Edwin Thomas loan to your wife—you have testified that you had known Mr. Thomas and that he has worked with you in various capacities and in various places—Mr. Thomas, according to the independent counsel's report, on page 80, and this deals with the question of your financial disclosure form which you filed on February 20, 1981, when you first went in. It says:

> As noted above, Mr. Thomas—

this is Mr. Edwin Thomas, who had loaned your wife the $15,000—

> Recalled that on one occasion he reminded Mr. Meese "not to forget" the loan Mr. Thomas had made the previous month to Mrs. Meese. He believed he did this because he wanted Mr. Meese to remind Mrs. Meese of the loan, in case Mrs. Meese participated in filling out a portion of the form relating to her holdings. Mr. Thomas placed this conversation in the early evening, standing in the doorway to Mr. Meese's office. According to Mr. Thomas, it was his habit to remind Mr. Meese of a number of things each evening as Mr. Meese rushed to pack his briefcase and leave the office. This remark might have been made in this context. Mr. Thomas' best recollection was that he simply reminded Mr. Meese of the existence of the loan, rather than reminding him that it should be listed on the Financial Disclosure Form. Mr. Thomas did not recall whether Mr. Meese made any response, or even acknowledged knowing of the loan. Mr. Meese stated that he had no recollection of Mr Thomas ever making such a remark at this time.

Now, on the disclosure form, of course, the Biotech stock purchase is not listed, and under "Liabilities" there appears "None."

Would you give us your position concerning the failure to disclose the Thomas loan? I would like to hear your response to this.

Mr. MEESE. Senator, as I think the independent counsel report clearly reflects, this was something that had just never registered to me. This particular transaction, informal and unusual as it was, was the type of thing that should be put on the form in terms of the liabilities and the kinds of things that were asked for on the form itself. It just never registered that that should be put on the form.

I never thought about the Thomas loan in conjunction with the filling out of the form, or was it ever brought to my attention in that context, and therefore it was inadvertently not included, but it was included later on when it was brought to my attention, and of course in the amended forms.

Senator HEFLIN. Mr. Chairman, I am going to stop now. I have some more questions, but I have a commitment, and I am going to have to leave, but I will return later.

The CHAIRMAN. Senator Biden.

Senator BIDEN. Mr. Meese, if I can go back to Mr. Barrack and the house, I will tell you that the only thing that I—let us get to the end first and work my way back—the only thing that concerns me about this whole transaction is the nature in which the purchase price was changed. The rest of it, I know it bothers some of my colleagues and a number of people in the press, but quite frankly, it does not bother me.

Let me just ask you a straightforward question. It seems to me that what happened here was that you were in trouble financially because the house was not selling. Your friend at the savings and loan, a political ally also, and someone who had an interest in making sure the savings and loan did not get stuck, it was in their interest to find a buyer for your house, it was in your interest to find a buyer. And a wealthy fellow named Barrack stepped up to the ball and essentially said he would try to do whatever it took, legally, to bail you out of your California house situation.

Isn't that essentially what happened here?

Mr. **Meese**. No, sir; Mr. Barrack had nothing to do with it, to my knowledge, at that time. All Mr. Barrack did, and the first thing that started this, was this: Mr. Barrack, who was in the real estate and land development business, said to Mr. James that he would see if he could find a buyer for the property, because he was in that business. He did find such a person in Mr. Howard. Mr. Howard was the one that purchased the property.

Senator **Biden**. But looking at it now, and what you know, I mean, wasn't it obvious that Barrack was doing a favor, for Mr. James, possibly?

Mr. **Meese**. No.

Senator **Biden**. He wasn't?

Mr **Meese**. I mean, he was doing a favor in finding the buyer.

Senator **Biden**. Yes. Usually, when people find buyers, they get commissions. Usually, when people find buyers, don't they—I mean, what was his interest in finding a buyer, if he was not trying to be a nice guy and do a favor?

Mr. **Meese**. He was trying, I am sure, to accede to Mr. James' request, to see if he could find a buyer. But he was also interested in finding a good business deal for the buyer, Mr. Howard.

Senator **Biden**. Back East, we call that a favor. I mean, we are quibbling over——

Mr. **Meese**. Well, I am not trying to quibble with you, Senator. I am just trying to tell accurately what happened.

Senator **Biden**. OK. Let me read what Stein said, and I am going to read from page 196. He says:

> Records of Great Americans revealed that Mr. Knutson opened an escrow account with Olga Rocha, Assistant Vice President and Senior Escrow Officer, later that day. She prepared escrow instructions which provided that the purchase price would be $300,000, that the buyer would be "I. Estelle Howard" and his wife, "Luciann", and that Great American Mortgages on the California property would be paid out of the proceeds of the sale. These instructions were sent to Mr. Knutson's office and to Los Angeles for pickup by Mr. Elkin.
>
> On Saturday, August 21, 1982, while Mr. Meese was in San Diego to attend the wedding of Mr. Knutson's daughter, he signed the escrow instructions. Mr. Knutson, holding Mrs. Meese's power of attorney, signed on her behalf. Mr. Elkin recalled that he delivered the Howards' copy to them and had them execute it. Both copies were received by the bank on Tuesday, August 24.

That is, both copies, signed, for a $300,000 purchase price.

Mr. **Meese**. Right. I had no knowledge of the execution by Mr. Howard.

Senator **Biden**. I am not suggesting. As you recall in the beginning, I said, trying to look at this in hindsight.

> On Monday, August 23, 1982, Mr. Schmidt was informed that the sale price would be insufficient by some $2,000 to cover the four loans outstanding on the Meeses' La Mesa property. In addition, the Meeses were $4,977.90 in arrears on payments on their Virginia property. Mr. Schmidt said he contacted Mr. Knutson and told him that more money would be needed. Ms. Rocha said she, as part of her normal practice, made the discovery of the shortfall and promptly notified Mr Knutson of the fact. Mr. Knutson said he received this information from Mr. Schmidt and notified Mr. Barrack that the Meeses needed an additional $7,500 to complete the deal. According to Mr. Knutson, Mr. Barrack said that he would have to consult with his

> principal. Mr. Barrack said he had no clear recollection of the conversation with Knutson.
>
> Mr. Barrack recalled discussing the change in the sales price in a brief meeting with Mr. Schmidt on Tuesday, August 24, 1982. According to Mr. Barrack, Mr. Schmidt told him that the bank needed a sales price of $307,500 to cover the Meeses' obligations. Mr. Schmidt told Mr. Barrack that the bank would be willing to lend 80 percent, or $246,000, of this purchase price. The down-payment would rise $1,500 to $41,500. However, Mr. Schmidt told Mr. Barrack that the interest rate would be lower, and the Bank would permit an assumption of the new mortgage when the Howards sold the house. Finally, with regard to this meeting, Mr. Barrack was introduced to Maria Kunac, who was to be the Great American loan officer handling the transaction.

Et cetera.

Now, is that essentially correct to the best of your knowledge?

Mr. MEESE. It is, to the best of the limited knowledge I have of all of those details, none of which I knew at that time, of course.

Senator BIDEN. All right. Now, what is the consideration you believe—what would be the consideration that Mr. Barrack got in return for putting up another $1,500?

Mr. MEESE. Mr. Barrack did not put it up. Mr. Howard put it up.

Senator BIDEN. What would be the consideration Mr. Howard would receive for agreeing to pay $7,500 more than he had agreed to pay, and could in fact, if I remember my contract law, hold you to as a matter of law—why would he come out, even with a lower interest rate, why would he agree to pay $7,500 more?

Mr. MEESE. Easily—because he got a lower interest rate.

Senator BIDEN. So your assumption is—you believe that overall, Mr. Howard got a better deal buying the house at $307,500 at a lower interest rate than he would have gotten at $300,000 at the interest rate he had originally agreed to?

Mr. MEESE. Yes, sir.

Senator BIDEN. Do we know what the interest rate differential was? [Conferring with staff.] Do you know what the interest rate differential was, Mr. Meese?

Mr. MEESE. No, sir, I do not. I think it was either 1 point or one-half a point. I am not sure. Well, I believe it says here. It says, "The interest rate would be 11 percent." So I assume that the original interest rate was something higher than that, either 11½ or 12 percent. I am reading from page 198.

Senator BIDEN. My staff tells me it was originally 11¾.

Now let me ask you a question. Obviously, Howard was the principal here. He is the one taking on the obligation; Mr. and Mrs. Howard were the ones that signed the contract—at least, you thought they were, right?

Mr. MEESE. As far as I know, they were.

Senator BIDEN. As far as you know, and as far as I know, they signed the contract.

Now, if that is the case, why do you think the bank contacted Mr. Barrack instead of Mr. Howard?

Mr. MEESE. Because Mr. Barrack was acting on behalf of Mr. Howard and representing him in these negotiations with Mr. Knutson and the bank.

Senator BIDEN. OK.

Mr. MEESE. In other words, he was representing the adverse party, or the other party, in this transaction.

Senator **Biden**. Now, one other question, and I know the Chairman is anxious to break here, but on this same issue.

I would like you to explain what is possibly a very innocent comment, on page 218. Let me back up. As you know, some people allege that in fact, you had a closer relationship with Mr. Barrack, and you knew more than you say you knew about the involvement of Mr. Barrack and the extent to which he was involved——

Mr. **Meese**. I do not know of anyone who has ever made that allegation, Senator.

Senator **Biden**. You don't? OK. Well, let me put it this way. No. Let me retract that statement and start off another way.

Mr. Barrack came to Washington on November 9, and a dinner was arranged by Mr. James, which Mr. James was originally going to attend, but he had to cancel—Mr. and Mrs. James had to cancel. You and Mr. Barrack and your wife had dinner in Georgetown.

And then Mr. James, according to the Stein report, recalled describing to Mrs. Meese what Mr. Barrack looked like, so she would recognize him at the restaurant, and Mrs. Meese saying, quote, "Oh, we'll recognize him. He'll be the one with the halo around his head," referring to his efforts in helping the Meeses sell their house.

Now, if that statement is correct, it would indicate that at least Mrs. Meese thought that Mr. Barrack was a good guy, who was doing something to help you out of a dilemma.

Is that an inappropriate interpretation, in your mind, for me to take from that comment?

Mr. **Meese**. No. I think it is an appropriate interpretation, if properly understood, and it is that both my wife and I felt that Mr. Barrack was a good guy and we were grateful that he had found a buyer for our house.

Senator **Biden**. OK. I have no further questions right now, Mr. Chairman.

Thank you, Mr. Meese.

The **Chairman**. The distinguished Senator from Utah.

Senator **Hatch**. I will reserve the balance of my time, Mr. Chairman.

The **Chairman**. Now, there are several witnesses who were here yesterday, and some of them are here today—some had to leave, I understand—and there are at least two who are going to have to catch planes this afternoon. It has not been agreed that they would testify out of order, but I am going to ask them to come forward and we will place their statements in the record.

Chief William L. Hart, Detroit police chief, if you will come forward, and Lt. Richard Boyd, national president of the Fraternal Order of Police, if you will come forward.

If you will raise your right hand and be sworn in, please.

Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you, God?

Chief **Hart**. I will.

Lieutenant **Boyd**. I do.

The **Chairman**. Please have a seat.

STATEMENT OF WILLIAM L. HART, CHIEF OF POLICE, DETROIT, MI; AND RICHARD A. BOYD, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE, McLOUD, OK

The **Chairman**. Now, as I understand, Chief Hart, you are the chief of police in Detroit?

Chief **Hart**. Yes, sir, I am.

The **Chairman**. And you have come to testify in behalf of Mr. Meese, or against Mr. Meese?

Chief **Hart**. Yes. I have a statement I would like to make on behalf of Mr. Meese.

The **Chairman**. Well, we will not go into the statement, but which side are you on?

Chief **Hart**. I am on Mr. Meese's side.

The **Chairman**. You are on Mr. Meese's side, and you are the chief of police in Detroit, MI.

Chief **Hart**. I am.

The **Chairman**. I see. Are you representing any other people in the statement that will be put in the record?

Chief **Hart**. I am on the executive board of the International Associations of Chiefs of Police.

The **Chairman**. And you are representing that board?

Chief **Hart**. I am.

The **Chairman**. And your statement endorses Mr. Meese?

Chief **Hart**. Yes, sir

The **Chairman**. Without objection, your statement will be placed in the record, so you can catch your plane this afternoon.

Chief **Hart**. Thank you.

[The following was received for the record:]

PREPARED STATEMENT OF WILLIAM L. HART

AS A LAW ENFORCEMENT PROFESSIONAL FOR THIRTY-TWO YEARS AND CHIEF OF POLICE OF THE CITY OF DETROIT FOR MORE THAN EIGHT YEARS, I KNOW THE IMPORTANCE TO LOCAL LAW ENFORCEMENT OF THE ATTORNEY GENERAL OF THE UNITED STATES. FOR THIS REASON I AM HERE TO SPEAK ON BEHALF OF THE HONORABLE EDWIN MEESE AND TO URGE HIS CONFIRMATION AS ATTORNEY GENERAL.

FROM MY VIEWPOINT AS A POLICE OFFICER, I CAN RECALL NO CANDIDATE BETTER SUITED OR WITH MORE PRACTICAL EXPERIENCE TO BE ATTORNEY GENERAL OF THIS GREAT COUNTRY. WE ALL KNOW THAT MR. MEESE SERVED AS CHIEF OF STAFF TO PRESIDENT REAGAN WHEN THE PRESIDENT WAS GOVERNOR OF CALIFORNIA. WHAT IS NOT WIDELY KNOWN IS THE BROAD BASE OF PRACTICAL EXPERIENCE MR. MEESE WOULD HAVE TO DRAW UPON AS THE CHIEF LAW ENFORCEMENT OFFICER OF THE LAND. HE HAS BEEN A MEMBER OF THE LEGAL PROFESSION FOR TWENTY-FIVE YEARS. HE SERVED AS DEPUTY DISTRICT ATTORNEY FOR ALAMEDA COUNTY CALIFORNIA. HE WAS A TRIAL LAWYER FOR EIGHT YEARS AND SERVED AS LEGAL ADVISOR TO A COUNTY GRAND JURY. HE REPRESENTED THE STATE DISTRICT ATTORNEYS AND PEACE OFFICERS ASSOCIATION BEFORE THE CALIFORNIA LEGISLATURE. HE SERVED AS VICE-CHAIRMAN OF THE CALIFORNIA ORGANIZED CRIME CONTROL COMMISSION.

MR. MEESE IS WELL RESPECTED IN THE ACADEMIC WORLD, HAVING BEEN ON THE FACULTY OF THE U.C.L.A. SCHOOL OF LAW AND APPOINTED PROFESSOR OF LAW AT THE UNIVERSITY OF SAN DIEGO WHERE HE ALSO SERVED AS DIRECTOR OF THE LAW SCHOOL CENTER FOR CRIMINAL JUSTICE MANAGEMENT.

MR. MEESE HAS ALSO LECTURED WIDELY ON SUCH TOPICS AS THE RESPONSIBILITY OF THE LEGAL PROFESSION TO PROVIDE SERVICES TO THE POOR. HE IS A SENSITIVE AND CARING INDIVIDUAL AND YET HAS THE DEDICATION TO LAW ENFORCEMENT WHICH IS SO ESSENTIAL. OF PARTICULAR INTEREST TO ME IS THAT WHILE LIVING IN CALIFORNIA, MR. MEESE FREQUENTLY RODE IN A SCOUT CAR WITH WORKING POLICE OFFICERS AT NIGHT AND ON WEEKENDS. THERE IS NO BETTER WAY TO LEARN THE PROBLEMS FACED BY THE AVERAGE POLICE OFFICER THAN BY SHARING HIS EXPERIENCES.

CRIME, AND THE FEAR OF CRIME, HAS HAD A PROFOUND EFFECT ALL ACROSS THIS GREAT NATION. SINCE 1960 THE NATIONAL CRIME RATE HAS MORE THAN TRIPLED. HOWEVER, WE ARE MAKING PROGRESS IN THE WAR AGAINST CRIME. LAW ENFORCEMENT TODAY IS MORE ENLIGHTENED. WE ARE CONCERNED WITH THE PREVENTION OF CRIME AND ACTIVELY SEEK CITIZEN INVOLVEMENT. IMPROVED POLICE-COMMUNITY RELATIONS IN DETROIT HAVE LED TO A LEVEL OF COOPERATION UNHEARD OF JUST A DECADE AGO. CITIZENS ARE MORE WILLING TO COME FORWARD AND BECOME INVOLVED. WE ARE DEVELOPING LONG-TERM PROGRAMS DESIGNED TO ATTACK THE ROOT CAUSES OF CRIME THEREBY FOSTERING A MORE ENDURING SOCIETY BY PROVIDING MORE DESIRABLE ALTERNATIVES TO A LIFETIME OF CRIMINAL ACTIVITY. THE PROGRESS THAT HAS BEEN MADE MUST BE CONTINUED AND SUPPORTED AT THE NATIONAL LEVEL. I BELIEVE EDWIN MEESE IS THE MAN TO PROVIDE LEADERSHIP AND DIRECTION AS ATTORNEY GENERAL OF THE UNITED STATES.

IN 1983 AND 1984, I HAD THE HONOR TO SERVE AS CHAIRMAN OF ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE. DURING THAT TIME I CAME TO KNOW MR. MEESE AS BOTH AN INDIVIDUAL AND AS A PROFESSIONAL. BECAUSE OF MY EXPERIENCE AND ASSOCIATION WITH MR. MEESE, I KNOW HE UNDERSTANDS THE PROBLEMS OF BIG CITIES AND THE POOR. HE IS DEDICATED TO THE PROTECTION OF THE CIVIL RIGHTS OF ALL CITIZENS, BOTH RICH AND POOR AND BELIEVES VERY CLEARLY IN ADMINISTERING THE LAW FAIRLY TO ALL.

MR. MEESE IS SO HIGHLY REGARDED IN THE LAW ENFORCEMENT COMMUNITY THAT HE WAS ASKED TO DELIVER THE KEY NOTE ADDRESS AT THE LAST CONFERENCE OF THE INTERNATIONAL ASSOCIATION OF

CHIEFS OF POLICE. THAT ADDRESS MADE ME PROUD OF MY CHOSEN PROFESSION AND AFFIRMED BY RESPECT FOR HIM AS A PERSON.

VARIOUS JURISDICTIONS HAVE UNIQUE PROBLEMS, AND YET, IN MY EXPERIENCE AS CHIEF OF POLICE, I KNOW A GOOD LAW ENFORCEMENT OFFICIAL SUCH AS ED MEESE CAN AND WILL WORK WITH DIVERSE GROUPS AND INTERESTS FOR THE BENEFIT OF ALL.

IT IS MY FIRM CONVICTION THAT ED MEESE'S PERSONAL ABILITY, UNIQUE BLEND OF EXPERIENCE AND DEDICATION WOULD MAKE HIM AN OUTSTANDING ATTORNEY GENERAL. THEREFORE, I URGE THIS COMMITTEE AND THE SENATE TO CONFIRM EDWIN MEESE III AS ATTORNEY GENERAL OF THE UNITED STATES.

STATEMENT OF RICHARD A. BOYD

The CHAIRMAN. Now, Lt. Richard Boyd.

Lieutenant BOYD. Yes, sir. We are in support of Mr. Meese, Mr. Chairman, and will submit this testimony.

The CHAIRMAN. Your statement is in support of Mr. Meese. Now, who are you representing?

Lieutenant BOYD. The Grand Lodge, Fraternal Order of Police, Mr. Chairman, 167,000 police officers.

The CHAIRMAN. And you have got to catch a plane as well this afternoon, I understand.

Without objection, your statement will be placed in the record.

[The following was received for the record:]

Grand Lodge
FRATERNAL ORDER OF POLICE
National Headquarters
5613 BELAIR ROAD
BALTIMORE, MARYLAND 21206
Phone (301) 488 6880 81

RICHARD A. BOYD
National President

Rt. 1, Box 754
McLoud, Oklahoma 74851
H-405-391-6819
L-405-236-4631
405-523-1425 (answering service)

DOROTHY A. WOODS
National Secretary

National Legal Advisor
John C. Ruckelshaus
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P. O. Box 44043
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January 30, 1985

U.S. SENATE - COMMITTEE OF THE JUDICIARY

TESTIFYING: RICHARD ALLEN BOYD, National President, FRATERNAL ORDER OF POLICE; the nation's largest organization of police:

MR. CHAIRMAN, Members of the Committee:

Representing the nation's largest police organization, I am proud to return to these committee hearings, in the name of the Fraternal Order of Police, to give you an unqualified "YES" - police support EDWIN MEESE to be confirmed as ATTORNEY GENERAL OF THE UNITED STATES.

These proceedings seem to be a reflection of what law enforcement is going through across this country: a scrutiny of the public, corporate, and personal performance of our law enforcement personnel. Consistantly, law enforcement, as has EDWIN MEESE, have PASSED THE TEST. MR. MEESE is getting great experience in the frivilious attacks against law enforcement by the bleeding hearts who stand in the way of justice and progress of law enforcement. EDWIN MEESE will indeed by qualified and experienced in handling this assignment by the President.

Law enforcement has found EDWIN MEESE to be qualified academically and to be experienced in a law enforcement role. EDWIN MEESE reflects the attitude of the public and of the police concerning the major issues embroiled in the coursts at this time. Specifically, EDWIN MEESE supports the DEATH PENALTY being enforced by the states and subscribes to a reduction in time from conviction to the carrying out of the sentence.

EDWIN MEESE believes that the courts should not throw out evidence or testimony obtained by an officer in good faith, even if there are minor flaws in the rules of search and seizure; and

EDWIN MEESE believes that the frivilious lawsuits being filed against police under the disguise of the Civil Rights Act, 42 USC Code, 1983 and 1988, are simply an attempt by the criminals of this nation to divert attention away from their own criminal acts and put a shadow on police; and MEESE knows that the unscrupulous lawyers filing these frivilious suits, are looking for the DEEP PUBLIC POCKET so they can line their own.

At the same time, EDWIN MEESE is a champion of individual rights and will strive to maintain constitutional guarntees for any person seeking the relief of the Office of Attorney General.

For all these reasons, Mr. Chairman, police in this country support EDWIN MEESE FOR ATTORNEY GENERAL. We seek your affirmative recommendation to the full Senate so that the business of law enforcement can progress.

Thankyou for the invitation to appear before this prestigous body.

The CHAIRMAN. Now, are there any other statements here on behalf of Mr. Meese or opposed to Mr. Meese? If so, come forward. I want to be fair to all sides.

STATEMENT OF SGT. WILLIAM PATTISON, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

Sergeant PATTISON. Sgt. William Pattison, representing the National Association of Police Organizations, in favor of Mr. Meese.

The CHAIRMAN. Which organization do you represent?

Sergeant PATTISON. The National Association of Police Organizations, 60,000 members.

The CHAIRMAN. And you have a statement in favor of Mr. Meese?

Sergeant PATTISON. Yes, I do.

The CHAIRMAN. Is it on behalf of your organization or just your personal statement?

Sergeant PATTISON. On behalf of the organization, Senator.

The CHAIRMAN. Without objection, your statement will be placed in the record.

[The following was received for the record:]

TESTIMONY OF

WILLIAM PATTISON

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE COMMITTEE: I am William Pattison, Executive Vice President of NAPO, the National Association of Police Organizations, which repesents 60,000 working men and women who police our streets and neighborhoods all across America. I am also a working Sergeant with the Nassau County New York Police Department which is the eighth largest police department in the United States and employs over 4,000 police officers.

I appreciate this opportunity to add NAPO's voice to support the nomination of Mr. Meese as Attorney General. With me today is Sterling B. Epps who is a Federal Agent and is here as Co-Chairman of the Legislative Committee of NAPO to endorse our support for Mr. Meese.

The law enforcement community is proud to add to its voice in urging this Committee and the full Senate to confirm the nomination of Ed Meese.

Ed Meese speaks for sound judgment when it comes to law enforcement. Consideration of his background, his intelligence and his ideas lead rational men and women to only one conclusion: this is a man who is eminently qualified to serve as Attorney General.

Ed Meese speaks for law enforcement at the local level. He speaks for those working cops who have to face danger and decision making with split second precision in order to protect our citizens. With Ed Meese's leadership as Attorney General, this Nation can rest easier every night that what must be done in the fight against crime will be done.

Mr. Chairman, NAPO has spoken to its members in California, particularly those who are members of minority racial groups, who have had the pleasure to work with Mr. Meese when he was District Attorney of Alameda County. Their experience uniformly was that he always made himself available to law enforcement officers and that he consistently made law enforcement one of his highest priorities.

Moreover, we believe that Mr. Meese will have an advantage as Attorney General in that he will be able to draw upon his close personal relationship with the President based on his many years of service for Mr. Reagan in many capacities. We believe that the President should have his choice as Attorney General ratified by the Senate, particularly where that choice is embodied in an outstanding public servant such as Edwin Meese.

Mr. Chairman, NAPO and the men and women of my own Department strongly urge this Committee and the Senate to confirm the nomination of Edwin Meese, III as Attorney General of the United States.

The CHAIRMAN. Is there anybody else?

STATEMENT OF THOMAS J. SARDINO, PRESIDENT, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, AND CHIEF OF POLICE, SYRACUSE, NY

Chief SARDINO. Yes, sir. I am Chief Thomas J. Sardino from Syracuse, NY.

The CHAIRMAN. Tell us your name, where you are from, and what organization you represent, and whether you are speaking for an organization or for yourself.

Chief SARDINO. I am speaking for the organization and myself. I am Thomas J. Sardino, chief of police of Syracuse, NY, and also the president of the International Association of Chiefs of Police.

We speak on behalf of and for Mr. Meese.

Senator BIDEN. And also a Syracuse University basketball fan, and hopefully, was at the Carrier Dome when they beat Georgetown.

Chief SARDINO. I was at Carrier Dome when we beat Georgetown, and I know that you are an alumnus of the same institution that I am, Senator.

Senator BIDEN. Would you also put in the record that you never arrested me when I was at Syracuse? [Laughter.]

Senator METZENBAUM. But maybe you should have?

Chief SARDINO. I will defer comment, because I do know you, Senator.

Senator METZENBAUM. The chief of police takes the fifth.

Senator BIDEN. He will defer comment because he knows me? That's a hell of a comment. Now I know what you are going through, Ed. [Laughter.]

The CHAIRMAN. Without objection, your statement will be placed in the record.

Chief SARDINO. Thank you.

[The following was received for the record:]

TESTIMONY
OF THE
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE, MY NAME IS THOMAS J. SARDINO AND I AM PRESIDENT OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP), AS WELL AS THE CHIEF OF POLICE FOR SYRACUSE, NEW YORK.

BY WAY OF INTRODUCTION, LET ME FIRST SAY THAT THE IACP IS A VOLUNTARY PROFESSIONAL ORGANIZATION ESTABLISHED IN 1893. IT IS COMPRISED OF CHIEFS OF POLICE AND OTHER LAW ENFORCEMENT PERSONNEL FROM ALL SECTIONS OF THE UNITED STATES AND MORE THAN 75 NATIONS. COMMAND PERSONNEL WITHIN THE UNITED STATES CONSTITUTE MORE THAN 70 PERCENT OF THE MORE THAN 14,000 MEMBERS. THROUGHOUT ITS EXISTENCE, THE IACP HAS STRIVED TO ACHIEVE PROPER, CONSCIENTIOUS AND RESOLUTE LAW ENFORCEMENT. IN ALL OF ITS ACTIVITIES, THE IACP HAS BEEN CONSTANTLY DEVOTED TO THE STEADY ADVANCEMENT OF THE NATION'S BEST WELFARE AND WELL-BEING. IT IS FOR THAT REASON THAT I APPEAR BEFORE YOU TODAY TO VOICE NOT ONLY MY OPINION BUT THE VIEWS OF THE VAST MAJORITY OF THE ASSOCIATION'S MEMBERS AS WELL AS OF THE MAJORITY OF THE LAW ENFORCEMENT COMMUNITY.

ON BEHALF OF THE ASSOCIATION MEMBERSHIP, I WOULD LIKE TO EXPRESS OUR SINCERE APPRECIATION FOR PROVIDING US THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO OFFER OUR UNQUALIFIED ENDORSEMENT OF EDWIN MEESE, III FOR THE POSITION OF UNITED STATES ATTORNEY GENERAL. WE BELIEVE THAT HIS PROVEN DEDICATION TO LAW ENFORCEMENT AND TO THE IMPROVEMENT OF OUR JUSTICE SYSTEM UNIQUELY QUALIFIES MR. MEESE TO ASSUME THE DUTIES OF THAT OFFICE.

I DO NOT NEED TO QUOTE STATISTICS TO YOU ON THE SEVERITY OF THE CRIME PROBLEM IN THIS COUNTRY. CRIME CONTROL WAS A MAJOR PRIORITY OF THE 98TH CONGRESS.

DURING ITS TERM, WE SAW THE PASSAGE OF THE MOST IMPORTANT MEASURE TO COMBAT CRIME IN OVER 25 YEARS. MR. MEESE WAS A VERY ACTIVE SUPPORTER OF THIS LEGISLATION.

WE ALL UNDERSTAND THE IMPORTANCE OF APPOINTING AN ATTORNEY GENERAL WHO WILL WORK EFFECTIVELY WITH ALL OF THE LAW ENFORCEMENT COMMUNITY TO BRING AN END TO THE CONSTANT FEAR OF BEING VICTIMIZED WHICH MOST OF OUR CITIZENS FEEL. EDWIN MEESE WOULD BE SUCH AN ATTORNEY GENERAL. HE HAS DEMONSTRATED A COMMITMENT TO LAW ENFORCEMENT NOT ONLY ON A NATIONAL LEVEL BUT ALSO ON STATE AND LOCAL LEVELS. THIS IS EVIDENCED BY HIS SUPPORT OF SUCH EFFORTS AS THE

DEVELOPMENT OF A TRAINING PROGRAM FOR STATE AND LOCAL LAW ENFORCEMENT OFFICIALS AT THE FEDERAL LAW ENFORCEMENT TRAINING CENTER AT GLYNCO, GEORGIA. PARTLY BECAUSE OF MR. MEESE'S WORK, STATE AND LOCAL OFFICERS NOW RECEIVE TRAINING IN SUCH AREAS AS EXPLOSIVES, ARSON AND OTHER CRIMINAL INVESTIGATORY TECHNIQUES WHICH ARE NOT READILY AVAILABLE AT THE STATE AND LOCAL LEVEL AND IN WHICH THE FEDERAL GOVERNMENT HAS PARTICULAR EXPERTISE AND FACILITIES. FURTHER, HE WAS A PROPONENT OF THE JUSTICE ASSISTANCE ACT, A PART OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984 WHICH WILL PROVIDE STATE AND LOCAL LAW ENFORCEMENT WITH MUCH NEEDED FEDERAL FUNDS.

MR. MEESE HAS VIGOROUSLY PURSUED WAYS TO CRACK DOWN ON ORGANIZED CRIME AND DRUG TRAFFICKING AND WAS ONE OF THE ARCHITECTS OF THE PRESIDENT'S COMMISSION ON ORGANIZED CRIME AND THE NATIONWIDE DRUG TASK FORCE NETWORK. THIS BACKGROUND IS INVALUABLE TO SOMEONE WHO, AS ATTORNEY GENERAL, WILL BECOME THE CHAIRMAN OF THE NEWLY CREATED NATIONAL DRUG ENFORCEMENT BOARD WHICH WILL COORDINATE FEDERAL OPERATIONS AND POLICY ON ILLEGAL DRUG LAW ENFORCEMENT.

WHAT IS PARTICULARLY IMPRESSIVE ABOUT MR. MEESE IS THAT SINCE HE HAS BEEN AT THE WHITE HOUSE, HE HAS ALWAYS BEEN ACCESSIBLE TO LAW ENFORCEMENT. HE HAS GONE OUT OF HIS WAY TO LISTEN TO OUR VIEWS AND TO SHARE WITH US HIS IDEAS. LAST YEAR HE SPOKE AT THE MID-YEAR MEETING OF THE DIVISION OF STATE ASSOCIATIONS OF CHIEFS OF POLICE, HELD IN SEATTLE. THREE YEARS AGO MR. MEESE TRAVELLED TO ATLANTA, GEORGIA, TO ADDRESS THE IACP MEMBERSHIP AT OUR ANNUAL CONFERENCE. SEVERAL YEARS AGO, HE WAS APPROACHED BY REPRESENTATIVES OF LAW ENFORCEMENT WHO VOICED CONCERN THAT THE CURRENT AVAILABILITY OF HANDGUN BULLETS CAPABLE OF PENETRATING SOFT BODY ARMOR POSED A SERIOUS THREAT TO THE LIVES OF LAW ENFORCEMENT OFFICERS. HIS QUICK RESPONSE WAS TO URGE THE IACP TO SUBMIT A PROPOSAL FOR A STUDY TO HELP IN THE DRAFTING OF LEGISLATION TO BAN ARMOR-PIERCING BULLETS.

EVEN BEFORE COMING TO WASHINGTON, MR. MEESE DEVOTED HIMSELF TO SERVICE WHICH HAS PREPARED HIM TO TAKE OVER AS THIS NATION'S CHIEF LAW ENFORCEMENT OFFICER. HE HAS PLAYED AN ACTIVE ROLE IN THE PASSAGE OF BENEFICIAL CRIMINAL JUSTICE LEGISLATION SINCE HE FIRST JOINED THE DISTRICT ATTORNEY'S OFFICE IN ALAMEDA COUNTY, CALIFORNIA, 25 YEARS AGO. AT THAT TIME HE SERVED ON THE LAW AND

LEGISLATION COMMITTEE FOR THE CALIFORNIA PEACE OFFICERS' ASSOCIATION. LATER AS AN ASSISTANT TO THEN GOVERNOR REAGAN, HE MADE SURE THAT THE LAW ENFORCEMENT VOICE WAS HEARD AT THE HIGHEST LEVELS OF THE STATE GOVERNMENT, JUST AS HE NOW DOES IN THE FEDERAL GOVERNMENT.

I AM CERTAIN THAT MR. MEESE WILL CONTINUE TO KEEP THE LINES OF COMMUNICATION READILY AVAILABLE TO LAW ENFORCEMENT IN HIS NEW POSITION AS ATTORNEY GENERAL. STATE AND LOCAL LAW ENFORCEMENT NEEDS THE DYNAMIC LEADERSHIP AND COUNSEL THAT WOULD EMANATE FROM THE OFFICE OF ATTORNEY GENERAL UNDER EDWIN MEESE, III.

THANK YOU.

The **Chairman**. Is there anyone else for or against Mr. Meese who has to catch a plane and cannot remain to testify in the regular order of the list of witnesses?

There appears no one else, so the other witnesses will come in due time, in the regular order. But these gentlemen had to leave, so we felt out of respect for them that we would place their statements in the record.

We are going to now take a recess until 2 o'clock.

[Whereupon, at 12:28 p.m., the committee was recessed, to reconvene at 2 o'clock this same day.]

AFTERNOON SESSION

[The committee reconvened at 2:02 p.m., Hon. Orrin Hatch presiding.]

Senator **Hatch**. We are happy to reconvene the Senate Judiciary Committee and, without objection, we will place the statements of Robert R. Fuesel, national president of the Federal Criminal Investigators Association, which was to be given by Mickey Veitch, who is the congressional affairs officer of the Federal Criminal Investigators Association, and the testimony of Mr. Ordway P. Burden, president of the Law Enforcement Assistance Foundation and chairman of the National Law Enforcement Council, into the record. Both statements are in favor of the nominee.

[See statements of Messrs. Fuesel and Burden on pp. 647 and 649, respectively.]

Senator HATCH. Since we have another witness who has to leave and we would like to accommodate him, we call at this time Mr. Wallace Riley, past president of the American Bar Association, Detroit, MI.

Mr. Riley, we are happy to welcome you here before the Judiciary Committee. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. RILEY. I do, sir.

Senator HATCH. As I understand it, Mr. Riley, you are willing to offer your testimony for the record. We will be pleased to hear that at this time.

STATEMENT OF WALLACE D. RILEY, PAST PRESIDENT, AMERICAN BAR ASSOCIATION, DETROIT, MI

Mr. RILEY. Fine. Mr. Chairman and members of the committee, my name is Wallace D. Riley, from Detroit, MI. I am the immediate past president of the American Bar Association and former president of the State Bar of Michigan, but I want to state for the record that I appear here today as an individual lawyer and citizen in support of the Attorney General-designate, Edwin Meese III, and I have prepared and will offer to you my prepared statement.

Senator HATCH. Without objection, we will place your prepared statement in the record at this point. We are grateful to you for coming.

[The following statement was received for the record:]

PREPARED STATEMENT OF WALLACE D. RILEY

Chairman Thurmond and Members of the Committee:

I thank you for the opportunity to appear before you to express my support for the confirmation of Edwin Meese, III, for the office of Attorney General of the United States. I appear before you today as an individual, a citizen, a lawyer and a person dedicated to the highest principles of professional competence and integrity for lawyers and for those who serve as public officials. I have practiced law for 33 years, and I am married to a lawyer. Except for two years active duty as an Army Judge Advocate General officer, I have been priviledged to spend all of my professional life as an active member of the organized bar. Recently, I concluded my term as President of the American Bar Association, and before that as President of the State Bar of Michigan. For the record, I state that I am not here representing either of those organizations, because historically neither of them has taken official action favoring or disfavoring nominees for the office of Attorney General of the United States.

However, I and a great majority of lawyers with whom I have spoken, continue to feel (and even more since the investigation and published conclusion of the report of the Independent Counsel) that Ed Meese would perform the duties of Attorney General of the United States in a manner to bring great credit to the office and to the country.

His formal training and degree in Public Administration from Yale University followed by his legal education and degree from the University of California at Berkeley are a sound foundation. His experience in industry, private law practice, and state and federal government increase his worth and expertise. His specialized training and on-going participation and interest in law enforcement add more valuable practical experience to his background. The record shows he continued to be steadily and closely involved with legal education, his own and teaching others. Finally, amid all this diversity of activity, he has made time for community involvement and helping others. Reviewing the multiple activities of his career, as trial lawyer, legislative representative of the Peace Officers Association, legal advisor to a grand jury, advocate of judicial reform, high-ranking state official, professor of law, legal reformer, and Counsellor to the President of the United States, it becomes difficult to imagine a professional background more suited to the Office of the Attorney General. In short, everything he has done in his professional legal career fits the job description for Attorney General.

Ed Meese has always been an active member of the organized bar. He has been an active member of the Criminal Justice Section of the ABA and serves as a working member of that Section's Committee on the Future of Criminal Justice where he has given valuable input and advice. He thereby recognizes his obligation to his profession and discharges it despite the otherwise heavy demands upon his personal time and official duties.

From all of the foregoing facts, and no doubt many, many more which are in the record and of which this Committee is aware, I and the fellow lawyers who share my views, firmly believe Ed Meese will be a great Attorney General. He has performed with great skill and credit in every position he has held in public life. His past is a prediction for his future. He deserves a chance to continue his career in public service. I, for one, applaud his willingness to serve.

As a postscript, I must say that I have not studied the 385 page Report of Independent Counsel concerning Edwin Meese, III, but I am well aware and rely upon the conclusion, that based upon the investigation, the Independent Counsel found no basis with respect to any of the 11 allegations for the bringing of prosecution against Mr. Meese for violation of federal criminal statute. I trust the Committee has found comfort in this conclusion also.

Mr. RILEY. Thank you. To whom shall I tender it?

Senator HEFLIN. Could we ask him a question?

Senator HATCH. Certainly.

Senator HEFLIN. What is your party affiliation?

Mr. RILEY. I assume you mean one of the major political parties?

Senator HEFLIN. Yes, sir.

Mr. RILEY. In Michigan, as you may know, Senator, we do not register party affiliation. So if your question can be interpreted to mean how did I vote in the last election——

Senator HEFLIN. Well, are you a Republican or a Democrat? [Laughter.]

Mr. RILEY. I am a Republican.

Senator HEFLIN. Well, I put things pretty simple; you put it simple. You are a lawyer.

Mr. RILEY. I wanted to get as much mileage out of that as I could. [Laughter.]

Senator HEFLIN. All lawyers do; all lawyers do.

Mr. RILEY. Yes, sir.

Senator HEFLIN. All right.

Senator HATCH. We are happy to have you here.

Mr. RILEY. Fine, thank you.

Senator HATCH. Thank you, Mr. Riley.

Mr. RILEY. If there are no other questions, I will——

Senator HATCH. We appreciate your being here as we gratefully appreciate your testimony.

Mr. RILEY. Thank you very much.

Senator HATCH. Are there any other witnesses who have to catch a plane or who, otherwise, would be willing to put their statements in the record at this point?

[No response.]

Senator HATCH. If not, then we will proceed on this basis.

Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Meese, as you know, the history of this committee's success in getting access to documents from the Department of Justice is not very good; in fact, it was stormy over the years and applied not only to Republican administrations, but generally to Democratic administrations as well and it does not make much difference, it seems, which party is in power in the Senate and which party is in power at the White House.

The same problem generally occurs with respect to access to documents to lots of other agencies as well, but since you are here to be potentially confirmed for Attorney General, I would like to ask a few questions about how you see your role as Attorney General in providing access and denying access of Department of Justice documents to the Judiciary Committee.

When I say stormy in the last several years, that is in some sense an understatement. The Justice Department has not returned phone calls to members of this committee in the past couple of years; very, very poor, I think, in exercising its responsibilities in a cooperative way to work with this committee.

The first question I would ask you is whether you think that the Senate Judiciary Committee is authorized to conduct oversight investigations and oversight work of the Department of Justice?

Mr. **MEESE**. Senator, I think it has been traditional that the Senate Judiciary Committee has conducted those investigations and I think that this appears to be a legitimate exercise of a constitutional authority.

Senator **BAUCUS**. Do you think part of that includes an effort by this committee to determine whether or not the Justice Department has faithfully pursued potential criminal and noncriminal actions that may or may not be brought against various individuals?

Mr. **MEESE**. The oversight function would include that responsibility, yes.

Senator **BAUCUS**. Why do you think that is an important role for this committee?

Mr. **MEESE**. Well, I think the Senate and the House have both traditionally held that in the exercise of their responsibilities to see that the laws are duly carried out; that oversight of the departments and agencies of the Government in implementing and carrying out the laws requires them to ascertain that fact.

It also is a basis for them to determine whether changes in the law and new laws are necessary.

Senator **BAUCUS**. Would it also be true that under our form of constitutional form of government with checks and balances, in a certain sense, that there is no other constitutional body that can undertake that function; that is, the executive branch under our constitutional form of government is set up to be looked at, or at least examined by the legislative branch as well, is that not correct?

Mr. **MEESE**. I think that has been the tradition, yes, sir.

Senator **BAUCUS**. And it is because we cannot have the fox guarding the chicken coop; that is, the executive branch cannot only be looking at itself to the exclusion of the legislative branch looking at the executive branch because, in effect, if only the executive branch were looking at the executive branch that would be essentially the fox guarding the chicken coop, would it not?

Mr. **MEESE**. Well, that is the justification that is used for congressional oversight, yes, sir.

Senator **BAUCUS**. What do you believe are the general grounds and reasons or circumstances under which the Justice Department should properly deny access to requests by this committee?

Mr. **Meese**. Senator, I am not totally familiar with all of the Justice Department regulations in that regard or the legal constraints that there may be on the Department. It would appear to me, however, that in the case of the Congress it is somewhat analogous to the White House, and that is that we have limitations on what Department of Justice information we normally have access to.

For example, in a pending investigation or a pending prosecution where there could be allegations of political interference, I believe both the White House and the Congress do not have access, and properly so, to documents pertaining to that investigation or prosecution.

Senator **Baucus**. What would political interference be? What do you mean by that?

Mr. **Meese**. Political interference would be that someone might be accused of or there were the appearance that someone was trying to interfere in the proper exercise of prosecutorial or investigative activity.

Senator **Baucus**. So you are saying that if, in the judgment of the Attorney General, there is a possibility that a Senator from this committee in asking for certain documents or access to certain documents may be requesting those documents or such information for a political purpose, in the opinion of the Attorney General, for a potential political purpose, that the Attorney General has the authority to deny access to that information?

Mr. **Meese**. It is my understanding that this has been the traditional policy that has been observed both by the Congress and by the Justice Department.

Senator **Baucus**. Is not everything political? How do you decide what is legitimately a political purpose and what is illegitimately a political purpose?

Mr. **Meese**. I do not think it turns on whether it is a political purpose or not. I think it is on whether or not there is an ongoing, open investigation or prosecution.

Senator **Baucus**. So the rationale for potentially denying information to this committee is whether there is investigation that is open or closed?

Mr. **Meese**. That is my understanding that that is the rationale used, yes, sir.

Senator **Baucus**. So you are saying that if there has been an investigation and the investigation is closed, that information should be turned over if this committee or a Senator on this committee requests it?

Mr. **Meese**. I would say as a general rule, yes, sir. There may be unusual exigencies that I am not familiar with, but as a general rule, that is my understanding and I believe that would be the policy that I would try to follow.

Senator **Baucus**. And you are further saying that in an open or ongoing investigation, the Attorney General or his designee should deny access to information in that case?

Mr. **Meese**. I would say to deny it, both to the Congress and to the White House, or anyone else outside the people directly working on the investigation, yes.

Senator **Baucus**. If that is the rule, in fulfilling the general purpose and goals of the separation of powers checks and balances that are built into our Constitution, how is the Congress to know whether an ongoing investigation is being properly conducted?

Mr. MEESE. I think the Congress can ask questions of the Attorney General and the Attorney General or his designated representative could supply such information that should satisfy those questions.

Senator BAUCUS. But if it is an open, ongoing case, how is the Congress to know whether or not it is provided the information that it needs to have in order to determine whether the investigation is being properly pursued and conducted?

Mr. MEESE. Well, I think in a given case it would certainly be my policy if I were confirmed as Attorney General to try to provide sufficient briefings on a case to enable the Congress to be satisfied that the investigation is going properly.

Most of these cases have definite timing sequences and are brought to a prosecution or a non-prosecution at certain milestones, such as when they go before the grand jury and the like.

Senator BAUCUS. So you think that in the final analysis it is up to the prerogative of the Attorney General to decide how much information should or should not be given to a particular Senator or to Congress?

Mr. MEESE. In an ongoing investigation or prosecution I think the answer is yes.

Senator BAUCUS. Are you familiar with the agreement between the Select Intelligence Committee and the Department of Justice with respect to the transfer of sensitive information?

Mr. MEESE. I am generally familiar with it. I am not familiar with it in detail.

Senator BAUCUS. Do you think that it is worth pursuing a similar kind of agreement between this committee and the Department of Justice in order to establish more certainty, more predictability as to what information should be or should not be divulged to this committee when requested by this committee?

Mr. MEESE. Senator, I would be happy to pursue such discussions to see if there might be some basis upon which greater access was available. I certainly would be open to that suggestion, yes, sir.

Senator BAUCUS. It seems to me that is a good model, that agreement, because obviously that agreement purports to serve two diametrically opposed goals. One is to protect the national security of the country, not to divulge sensitive information to the country, a very legitimate goal.

Another goal, obviously, is for Congress to determine whether or not the intelligence agencies, particularly the CIA and other intelligence agencies, are, in fact, performing their functions legitimately.

And to meet those twin goals, this Congress has set up a Select Intelligence Committee so that certain sensitive information is available only to those committee members and is not available generally to the entire Congress.

I am wondering why we could not develop the same kinds of procedures here so that this committee could have access to all the information, or if not all, nearly all information in an ongoing investigation available to, say, a subcommittee of Senators or to certain Senators on a need-to-know basis.

Mr. **Meese**. Well, Senator, I am certainly willing to explore that possibility. I think it should be pointed out there is a great difference between national security information and individual cases in that the national security information remains secret, and properly so, forever, or classified, or in most cases it does, whereas in the case of an investigation or a prosecution there is a termination point after which that information, on a postaudit or postinspection basis would be available to the members of the committee to see if——

Senator **Baucus**. How is that relevant for the purposes of this discussion?

Mr. **Meese**. It is relevant because the national security information generally never becomes available other than through some kind of an unusual arrangement such as that of which you spoke, whereas the cases and the investigations would have a closing point, at which time there would be no reason for that information not to come before the committee.

Senator **Baucus**. If the intelligence information never becomes available and——

Mr. **Meese**. No; I say it does become available through the arrangement that you suggested.

Senator **Baucus**. But I thought you said that through that arrangement, it is always kept out of the public domain.

Mr. **Meese**. Yes, sir.

Senator **Baucus**. Well, if national security information is almost always kept out of the public domain, then it seems to me a stronger reason, therefore, for the Justice Department to transmit information to the Congress, information which will become part of the public domain, so long as during the currency of the investigation, before the investigation is closed, members of this committee pledge to secrecy and do not divulge information, much the same way as members of the Senate Intelligence Committee do not divulge information.

I do not follow the line of reasoning. It just seems to me that the difference between continual, indefinite secrecy from the public does not make any difference compared with this case where eventually when the case is closed information is in the public domain.

Mr. **Meese**. Well, the difference is that if the veil of absolute secrecy were kept on national intelligence information, then Congress could never exercise its oversight function, whereas in the case of investigations and prosecutions that close at definable points, that information thereafter would become available for the oversight function.

Senator **Baucus**. Well, I must tell you it is a problem, Mr. Meese, though, because I am not saying this is done in all cases, but I think it is done in some cases. Investigations are intentionally kept open so as to foreclose and prevent the Congress from looking at information.

Mr. **Meese**. Well, I can assure you, Senator, that if I am confirmed as Attorney General, no investigation will be intentionally kept open or reopened as a means of keeping information from the Congress.

Senator **Baucus**. I appreciate that intention and I take you for your word and I think you will live up to that intention. However, in order to assure greater certainty that that is the case and to satisfy some questions that might be in the mind of the public, do you not think it is good to have a better system of access for members of this committee for ongoing, current cases as well?

Mr. **MEESE**. I am not sure that it would be a good thing because obviously this information could not be made available to the public anyway.

Senator **BAUCUS**. Stop right there. The Senate Intelligence Committee does not make information available to the public. I am talking about a process where Senators on this committee also would not make information available to the public.

I think the Senate Intelligence Committee has served this country well. It is better than the old process when all classified information was available to all Members of Congress. That did not work, so we set up a new system. It is a compromise and the compromise, I think, is working where only a few Members of the House and the Senate have near complete access to classified information.

So I am here asking why can we not here set up a compromise, one I think serves all legitimate purposes, where Senators do not divulge information to the public.

Mr. **MEESE**. Well, as I said, Senator, I am certainly agreeable to looking into that possibility with you.

Senator **BAUCUS**. What is the timeframe in which you think we should nail this down, in the event you are confirmed as Attorney General?

Mr. **MEESE**. Well, if I am confirmed as Attorney General, I cannot give you an exact timeframe, but I would certainly be willing to go to work virtually immediately to see what might be done.

Senator **BAUCUS**. How about 6 months?

Senator **HATCH**. Senator, your time is up.

Senator **BAUCUS**. Six months? How is that?

Mr. **MEESE**. I certainly would think within 6 months after confirmation, I would want to sit down with you and work on this, yes.

Senator **BAUCUS**. Are you willing to appear, then, before this committee after 6 months and discuss our progress and see how far along we have gone?

Mr. **MEESE**. Yes, sir, I would be willing within 6 months after confirmation, and certainly to sit down on the details even before that.

Senator **BAUCUS**. OK, thank you very much. Thank you, Mr. Chairman.

Senator **HATCH**. Thank you, Senator.

We are on the third round and, Senator Heflin, I believe you are next. Senator Heflin.

Senator Metzenbaum, as I understand it, you would like to wait for the end until everybody is finished?

Senator **METZENBAUM**. Yes. As a matter of fact, Mr. Chairman, I have a feeling that there might be some advantage in just letting each of the Senators conclude. Do you have objection to that?

Senator **HATCH**. I have no objection.

Are you finished, Senator Baucus?

Senator **BAUCUS**. I am finished.

Senator **HATCH**. Thank you.

Senator Heflin, why do we not turn to you and if you can conclude, what we would like to do is we would like to finish all the hearings today, but it does not appear that we are going to. But we certainly would like to finish with Mr. Meese today.

Senator **DeConcini**. Mr. Chairman.

Senator **Hatch**. Yes, Senator.

Senator **DeConcini**. I have to be away from the committee from 3 to 3:30. I plan to stay here now until 5 minutes to 3 and be back at 3:30.

Senator **Heflin**. I will yield to the Senator.

Senator **DeConcini**. No, I do not want to do that because you have been sitting here all morning and I have not been and I feel I'd be infringing upon——

Senator **Heflin**. Well, I am not only sitting here for the purpose of asking questions, I am also listening.

Senator **DeConcini**. My question really was whether or not at 3:30 you would still be here with Mr. Meese.

Senator **Hatch**. Yes, we will.

Senator Heflin, how long do you expect your questions to last?

Senator **Heflin**. Right now, not too long, but I may have other questions as I listen. [Laughter.]

Senator **Hatch**. That is fine.

Senator **Heflin**. It is quite all right for Senator DeConcini——

Senator **Hatch**. Why do we not turn to Senator DeConcini to accommodate your schedule and then we will turn immediately after that to Senator Heflin.

Senator **DeConcini**. I can.

Senator **Hatch**. Then, Senator Heflin, after which we will turn the time to Senator Metzenbaum unless someone on the other side has further questions.

Senator **DeConcini**. Mr. Chairman, thank you very much. I thank my friend from Alabama very much for making this arrangement. I apologize for not being here and for having to leave for a half hour on top of it. I feel like I am infringing upon Senator Heflin's time and I am most appreciative.

Mr. Meese, I wanted to ask you some questions about—and perhaps this has been gone over—your Army Reserve status. Let me start by saying I admire and respect you as a Reserve officer. I happen to have been one, too. I did not reach above the rank of first lieutenant, but I understand the importance of the Reserve and I also understand the desire of individuals to advance in their rank. Although obviously I did not, you have and your military career speaks for itself. I guess the only reason we are here about this is that it was one of the allegations against you. You were charged with some impropriety, perhaps criminal involvement, from which you were totally exonerated.

My concern relates to when you were in the White House. Is it correct that in 1981 you were on Reserve or retired Reserve status? Is that correct?

Mr. **Meese**. Yes, sir. I was on retired Reserve status the latter part of the 1970's, then when I came to the White House in 1981.

Senator **DeConcini**. How many years did you have in total military service, retired and active?

Mr. MEESE. When I came to the White House, I had about 28 years, 28 or 29 years enlisted and officer service.

Senator DECONCINI. What they would call good years?

Mr. MEESE. Good years, I think I had probably 22 or 23, something like that.

Senator DECONCINI. Ample to have a retirement?

Mr. MEESE. Yes, sir.

Senator DECONCINI. At age 62 or whatever?

Mr. MEESE. When I attain the age of 60.

Senator DECONCINI. Yes, age 60. So when you came in in July, let us take the date of July 21, 1981, you had enough time then to have retirement at age 60 at the rank of lieutenant colonel, is that right?

Mr. MEESE. Yes, sir.

Senator DECONCINI. Now, how did you come to petition or be involved with the request that you be put on active duty, and why?

Mr. MEESE. If I may correct that, active reserve status.

Senator DECONCINI. Excuse me.

Mr. MEESE. In June of 1981, I received the man of the year award from the Civil Affairs Association, which is an association of the Civil Affairs Branch of the Army. And while I was attending that conference at which the award was presented to me and speaking to that group, members of the Army Reserve unit that I had been with formerly, which was the civil affairs unit who were then on temporary duty at the Pentagon, talked to me about the possibility of my returning to an active Reserve status.

Senator DECONCINI. Excuse me. Would that require, then, attending so many drills per month and going to summer camp, et cetera?

Mr. MEESE. No. They indicated that there was a status known as a mobilization designee status which would not require weekly or monthly drills, but would require a certain number of active duty days each year. Much of that was optional. The active duty was really dependent upon the requirements of the particular mobilization designation job.

I indicated that I would be interested if that was permitted by the Army regulations, and I was uncertain whether you could go from a retired to an active status, but that if it was not prohibited, I would be very much interested because I have had a long career in the Army Reserve and was desirous of going back into an active status. I wanted to continue with more active Army Reserve activities, particularly after I left Government.

Senator DECONCINI. Who did you speak to, do you remember, about this subject matter?

Mr. MEESE. Yes. I spoke with Colonel Sullivan, who had been a member of the same unit, the 351st Civil Affairs Command, that I had been in in Mountain View, CA.

Senator DECONCINI. Did you talk to General Berkman at that time?

Mr. MEESE. He may have been involved at one point in the conversation. I am not sure. He was one of the principal speakers at that conference, and it may have been mentioned to him, although I am not sure.

Senator **DeConcini**. At that time, when you were at the conference, General Berkman was the Chief of the Army Reserve, or its equivalent, whatever that——

Mr. **Meese**. Yes, sir. He was the Chief of the Army Reserve at that time, and is now. He also had been my commanding officer when I was in the Civil Affairs Command.

Senator **DeConcini**. You had worked with him?

Mr. **Meese**. I had worked under his command. Yes, sir.

Senator **DeConcini**. Would you have accrued the necessary points to be considered a full colonel by merely going on active duty?

Mr. **Meese**. Actually, I do not know because——

Senator **DeConcini**. Excuse me. Active Reserve?

Mr. **Meese**. Active Reserve. I don't know because I didn't give any consideration to that at the time.

Senator **DeConcini**. Are you saying that at the time, you were only looking to go on Active Reserve for the purpose of becoming more actively involved in the Reserve military?

Mr. **Meese**. Yes, sir, and I was interested in getting back, so that I could continue to keep up on the doctrine, and the information that is given to Reserve officers.

Senator **DeConcini**. So, in 1981, you were thinking about it, after your speech and having been with these people?

Mr. **Meese**. Yes, sir. That was the initiation of the thought in my mind.

Senator **DeConcini**. Now, when you went down the road, can you give us the sequence of events that brought you to that active status?

Mr. **Meese**. I heard again from Colonel Sullivan, I believe some time later; a lot of this I'm reconstructing from information that was in the report, both of the Inspector-General of the Army, and of the independent counsel. Some time later, I believe in June, or certainly within a few weeks of the time that I was at the Civil Affairs Conference, I was contacted by Colonel Sullivan, who advised me that it was possible for me to assume a mobilization designation position with the Selective Service System, and that I would then be able to come back on an Active Reserve status.

Senator **DeConcini**. And did Colonel Sullivan then initiate this in your behalf?

Mr. **Meese**. That's my understanding. Yes, sir.

Senator **DeConcini**. Did you have to sign some papers?

Mr. **Meese**. I believe that I signed papers at the time although I'm not positive. I know papers were signed, or were prepared by the Selective Service System, but I'm not sure whether I had to sign anything or not.

Senator **DeConcini**. But you gave your consent to go ahead?

Mr. **Meese**. I certainly gave my consent.

Senator **DeConcini**. And Colonel Sullivan then proceeded to attempt to get you transferred to active status?

Mr. **Meese**. The next thing that I knew about it was that I received orders reassigning me from the Retired Reserve list to the Active Reserve list, and assigning me to a mobilization designation position with the Selective Service System.

Senator DeConcini. When you returned to active status, how long was it before you received your promotion?

Mr. Meese. Actually, the next thing that occurred was that I came up for what is called mandatory promotion consideration, which I believe took place in November 1982.

Senator DeConcini. That was routine? That would have happened to anyone, is that correct?

Mr. Meese. Yes, sir. Anyone who was in what they called the promotion zone, which I was at the time.

Senator DeConcini. Until, let's say, roughly November 1982, when you came up for mandatory promotion consideration?

Mr. Meese. Yes, sir. It was what they call the November board. Actually, I think it convened some time in late October.

Senator DeConcini. And what happened?

Mr. Meese. At that time, I was contacted, by or had occasion to discuss this with, Colonel Sullivan, and I indicated to him that I had not yet completed the educational requirements, although I was at that time enrolled in the Command and General Staff College to complete the educational requirements for promotion to colonel.

Senator DeConcini. When did you enroll in that college?

Mr. Meese. I enrolled in that college, I can't remember exactly, but I think it was some time in late 1981, or possibly early 1982.

Senator DeConcini. What would that require? Was it a 6-week course, 1-week course, or——

Mr. Meese. No, sir. It's a correspondence course——

Senator DeConcini. A correspondence course.

Mr. Meese [continuing]. And so it takes place over a period of time.

Senator DeConcini. About how long would it have taken you, had you completed it?

Mr. Meese. Well, it depends on how fast you complete the correspondence course.

Senator DeConcini. Let me ask you: Did you complete the course?

Mr. Meese. No, sir. I did not.

Senator DeConcini. About how long is the average time, do you have any idea, to complete the course?

Mr. Meese. The average time can be anywhere from 6 months to 2 or 3 years.

Senator DeConcini. Did you start the course?

Mr. Meese. Yes, sir. I did start the course.

Senator DeConcini. How many lessons did you complete, more or less?

Mr. Meese. I had completed—I think I had gotten a constructive credit for one or two phases, and I had completed, I think, a little over half.

Senator DeConcini. What period of time was that? Do you recall?

Mr. Meese. Well, at the time of the November promotion board, I had received the credit, and had completed but not turned in about half the lessons. So I would say that I was approaching halfway through the course.

Senator DECONCINI. You were granted constructive credit which, in essence, gave you a completion of the course?

Mr. MEESE. No. No, sir. It was at that time that Colonel Sullivan advised me that there was an alternative way to satisfy the educational requirements, and that was to enroll in the National Security Management Course, which was a course given by the Industrial College of the Armed Forces, which is a part of the National Defense University. And he said that he felt that I should be granted constructive credit for that course.

I had enrolled in that course, also, at his suggestion. I had the books, and had looked through the books, and was in the process of taking that course.

In reading the books, I learned that the information was very similar to the type of information I received on a virtually daily basis, as a part of my responsibilities as a member of the National Security Council, except that the information was a little older.

And, in discussing this with Colonel Sullivan, he said he thought I should be able to get constructive credit for the national security management course, based upon my experience in California where my cabinet responsibilities had included supervision of the California National Guard; the civilian experience that I was gaining and had gained over 2 years, or almost 2 years as a member of the National Security Council; and the other studying and gaining of information that I had achieved in the interim period. I said that—do you want me to just go on?

Senator DECONCINI. Well, let me ask you a question. Did you initiate the request with Colonel Sullivan, or did he come to you?

Mr. MEESE. I don't remember how it happened. We talked from time to time because we had other matters of mutual interest, and so I'm not sure whether he knew of this promotion board, or whether I initiated it, but I think he initiated the conversation.

Senator DECONCINI. All right. Let's go back just for a minute so I understand. In late 1981, you enroll in the course that we are talking about now?

Mr. MEESE. No, sir. There are two courses.

Senator DECONCINI. Right.

Mr. MEESE. I enrolled in the command and general staff course at some point.

Senator DECONCINI. Yes; command and general staff. You enrolled in late 1981, you believe, or early 1982?

Mr. MEESE. Yes, sir.

Senator DECONCINI. Along comes the mandatory promotion board of November 1982. You are then about halfway through the command and general staff course, is that right?

Mr. MEESE. Right.

Senator DECONCINI. About that time, either you or Colonel Sullivan initiates a discussion about taking the National Security Management course, for the purpose of getting constructive credit to satisfy the promotional requirement?

Mr. MEESE. Yes, sir, although the time that I enrolled may have been a little before that because with the promotion board, you get notice, I think about 60 or 90 days before you come up before the board.

Senator DECONCINI. OK.

Mr. MEESE. But some time in that period.

Senator DECONCINI. So then did you enroll in the National Security Management course?

Mr. MEESE. Yes, sir.

Senator DECONCINI. Did you drop the other course?

Mr. MEESE. No, sir. I continued being enrolled in both courses, which is permissible.

Senator DECONCINI. Now when you're in the national security management course, do you have lessons, or is this just on the job training?

Mr. MEESE. No. You have lessons. There are two ways to get credit for the course. One would be by taking the lessons that are provided with the course, which is essentially a lot of reading, and then filling out of an examination form, and the other alternative that Colonel Sullivan brought to my attention, was to receive constructive credit for the course because of the day-to-day knowledge that I had attained.

Senator DECONCINI. How do you receive that? Do you write a letter? Fill out a form?

Mr. MEESE. I did not know at the time how you did it, except that I knew that you had to apply, or actually, an application had to be forwarded by your commanding officer. In this case, an application was forwarded by my commanding officer, and ultimately approved by the Chief of the Army——

Senator DECONCINI. Colonel Sullivan was your commanding officer?

Mr. MEESE. No, sir.

Senator DECONCINI. Who was? Berkman?

Mr. MEESE. Thomas Turnage, the head of the Selective Service System.

Senator DECONCINI. General Turnage was your commanding officer?

Mr. MEESE. Yes, sir.

Senator DECONCINI. And you made a request that the constructive credits be given to you to satisfy the command and general staff course——

Mr. MEESE. No. The national security management course.

Senator DECONCINI. Not the national—OK.

Mr. MEESE. No, sir.

Senator DECONCINI. That was granted to you by General Turnage?

Mr. MEESE. General Turnage initiated the application. The application then went to the Industrial College of the Armed Forces. The constructive credit was granted by the Industrial College of the Armed Forces, and it was ultimately approved by the Chief of the Army Reserve, General Berkman.

Senator DECONCINI. You got full credit for a national security management course?

Mr. MEESE. Yes, sir.

Senator DECONCINI. That was the constructive credit you received?

Mr. MEESE. Yes, sir.

Senator DECONCINI. That qualified you for promotion?

Mr. MEESE. That qualified me for promotion. Yes, sir.

Senator DeConcini. All during the time, of course, you were on Active Reserve status?

Mr. Meese. I was on Active Reserve status, by that time, about 1 year and 4 months, or something like that.

Senator DeConcini. So the command and general staff course you never finished was not necessary in order to be considered for promotion. Is that right?

Mr. Meese. That's correct. That's correct.

Senator DeConcini. What discussions, and who did you have discussions with regarding the constructive credit?

Mr. Meese. With Colonel Sullivan.

Senator DeConcini. Only with Colonel Sullivan?

Mr. Meese. Yes, sir.

Senator DeConcini. Your testimony is you don't remember whether you initiated that or he initiated that?

Mr. Meese. I don't remember. It may be that at one point I did put in a phone call to General Turnage requesting the application for constructive credit that he had to participate in. I'm not positive of that.

Senator DeConcini. What was your motive—to secure the promotion to full colonel, obviously——

Mr. Meese. Yes, sir.

Senator DeConcini [continuing]. And you felt at the time, that there was no impropriety, I presume——

Mr. Meese. That is correct.

Senator DeConcini [continuing]. In making this request?

Mr. Meese. That is correct. One of the things that I said to Colonel Sullivan at the time was, that in the granting of constructive credit, I did not want to do anything except what was appropriate according to the regulations.

Senator DeConcini. The independent counsel I think makes reference to General Berkman having received some conflicting advice about potential problems. Who finally granted you the promotion? General Berkman?

Mr. Meese. No, sir. It was done by a promotion board.

Senator DeConcini. Was General Berkman part of that, or did he recommend——

Mr. Meese. No, sir. He had no part in that. It was done by a promotion board.

Senator DeConcini. Did he play any role? Did he appoint the promotion board or——

Mr. Meese. Not to my knowledge; no, sir.

Senator DeConcini. He had no recommendation in that area at all?

Mr. Meese. No. He would not be involved in the promotion itself, to the best of my knowledge.

Senator DeConcini. So General Berkman, the head of the Army Reserve has nothing to do with Reserve promotions?

Mr. Meese. He has nothing to do with Reserve promotions. No, sir.

Senator DeConcini. He doesn't?

Mr. Meese. Not to my knowledge.

Senator DeConcini. What does he do as to the officers? He has no input at all as to who gets promoted?

Mr. MEESE. No. I believe the people to be promoted are selected by a board, a promotion board which is convened at the Reserve center, or in the Pentagon, I'm not sure where.

Senator DECONCINI. And General Berkman, or whoever is the Chief of the Army Reserve, has nothing to do with that Board?

Mr. MEESE. I do not believe so. No, sir.

Senator DECONCINI. All right. Do you know who appoints the board? Can we find out?

Mr. MEESE. I do not know who appoints the board.

Senator DECONCINI. Mr. Chairman, I wonder if I might ask someone on the chairman's staff to make an inquiry. I would like to know who appoints that board, if possible.

Senator HATCH. I will be happy to make that inquiry.

Mr. MEESE. I think I should point out, Senator, that the promotion board was appointed before my name ever would have come before it.

Senator DECONCINI. Yes. It was in existence, I understand, taking up a number of promotions.

Mr. MEESE. Yes, sir. There were some 600 or more, I believe.

Senator DECONCINI. Now what part did Berkman play in the constructive credit?

Mr. MEESE. I believe that after the credit was requested by my commanding officer, he had to approve it either before, or after the credit was granted by the Industrial College of the Armed Forces, I don't know whether it was before, or after.

Senator DECONCINI. Did he approve it?

Mr. MEESE. Yes, sir.

Senetor DECONCINI. Do you know when?

Mr. MEESE. I don't know the date, but I am sure it was some time in November 1981. 1982. Excuse me.

Senator DECONCINI. 1982. Did you ever talk to General Berkman?

Mr. MEESE. No, sir.

Senator DECONCINI. About any subject matter?

Mr. MEESE. I've seen him socially at various events, but I have never talked to him about anything relating to my personal situation.

Senator DECONCINI. Did you talk to him about his reappointment as the chief Army Reserve officer?

Mr. MEESE. No, sir.

Senator DECONCINI. Was that one of the things that was considered in your appointment process in the White House, that particular appointment?

Mr. MEESE. No, sir. I never encountered that in any official capacity.

Senator DECONCINI. Did you know that his appointment was up for consideration during this time?

Mr. MEESE. I knew that his reappointment was up in the following year because members of the Reserve Officers Association had come to me, to ask me to recommend to the Secretary of Defense, and the Secretary of the Army, that he be reappointed.

Senator DECONCINI. That would have been in 1983, the following year?

Mr. MEESE. I am not sure if they came to me in 1982, late 1982, or in 1983. I cannot tell you the exact time.

Senator DECONCINI. Was it a year away?

Mr. MEESE. No, sir. He was reappointed in early 1983, so it was not far from the time that we're talking about.

Senator DECONCINI. Did you do anything?

Mr. MEESE. Yes, sir. I called and passed this information on to the Secretary of Defense, and I may have passed it on to the Secretary of the Army. I don't recall for certain.

Senator DECONCINI. Do you recall the time sequence when you made those calls to the Secretary of Defense or Secretary of the Army?

Mr. MEESE. I would say it was contemporaneous with my receiving the information from the Reserve Officers Association. My best guess would be that it would be December, possibly, of 1982, possibly January 1983.

Senator DECONCINI. Was this after you had received your promotion?

Mr. MEESE. No, sir. I did not receive my promotion until March 1983.

Senator DECONCINI. Yes. So it was before your promotion was considered, or probably before?

Mr. MEESE. No. My promotion would have been considered by the board in November of 1982. I did not receive my promotion until March of 1983.

Senator DECONCINI. All right. November is when it was up for consideration, and it takes that long to get the promotion?

Mr. MEESE. That is my understanding. At least it did in this particular case, since it has to be approved by the Congress.

Senator DECONCINI. Now, the independent counsel indicates that there was some discussion, and written memorandum between you and Secretary of the Army Marsh. He goes on to say that you do not have any recollection of that. Is that accurate?

Mr. MEESE. According to the independent counsel, there was no memorandum, there was a conversation that Secretary Marsh remembers, in which he called me.

Senator DECONCINI. Well, I thought the independent—and I will stand corrected if it's not so—that the independent counsel indicated that Secretary of the Army Marsh testified that he had sent a memo to Mr. Meese, stating that the promotion would have the appearance of special treatment, and that he later called Mr. Meese regarding the same.

Mr. MEESE. The Secretary testified that he sent a memorandum, which was not his memorandum, but it was a memorandum of another officer, General Thurman. I do not recall receiving that. My best approximation is that if he sent it, it was probably via Colonel Sullivan. I also have no recollection of ever having seen that memorandum before it was presented to me during the course of the independent counsel's inquiry.

I believe that if Colonel Sullivan had proffered that memorandum to me, and asked if I wanted to see it, I would have said no, because I have taken the position at all times that I did not want to have any knowledge of any of the internal workings of the Army, as far as my promotion was concerned, because I didn't want to have any special treatment, nor did I want to have any part in the consideration. I felt that was up to the Army.

Senator DECONCINI. Well, what if Colonel Sullivan had said, "Ed, here's a memo from the Secretary of the Army, or General Thurman, which maybe you ought to read because it's talking about special treatment."

Mr. MEESE. Well, so far as I know——

Senator DECONCINI. Would you have read it?

Mr. MEESE. I would have read it under those circumstances, but nothing was said to me to that effect, either by Colonel Sullivan or by Secretary Marsh, and indeed, there is nothing in the memorandum itself, which I have seen since that time, that talks about special treatment.

As a matter of fact, General Thurman's memo says the constructive credit was proper.

Senator DECONCINI. There's nothing in the memo under question here, the one that Mr. Stein recites. Secretary of the Army Marsh testified that he had sent a memo to you, Mr. Meese, stating that the promotion would have the appearance of special treatment.

Mr. MEESE. The memorandum doesn't say that. What it does include is a recommendation by General Thurman, who at that time was the Deputy Chief of Staff for Personnel. "It would be better to wait a year, and then put some other officers up also for constructive credit."

Senator DECONCINI. And no further explanation of why?

Mr. MEESE. "And that this would look more like ordinary business", or words to that effect, or, "In the normal course", something like that.

Senator DECONCINI. You didn't have any idea of what was in this memo until much later?

Mr. MEESE. Yes, sir. And nobody suggested to me that there was anything improper, or in any way contrary to what I felt was the proper course of action.

Senator DECONCINI. The memo says: "Thus constructive credit for Mr. Meese would be accomplished as part of an, quote, 'orderly piece of work', end quote, regular, normal affair, by putting it off a year."

Mr. MEESE. Yes, sir.

Senator DECONCINI. Is that accurate?

Mr. MEESE. Yes, sir, although I had never seen that language at the time.

Senator DECONCINI. At the time. Now, the independent counsel also says that you received a call from Secretary Marsh——

Mr. MEESE. Yes, sir.

Senator DECONCINI [continuing]. On this same subject matter. Do you recall that?

Mr. MEESE. I do not recall that telephone conversation.

Senator DECONCINI. Did you talk to Mr. Marsh often? The Secretary?

Mr. MEESE. Yes. I talked with Mr. Marsh on a number of occasions on a number of topics, so it would—not be unusual for him to call me.

Senator DECONCINI. Yet how do you attribute the lapse of recollection on your part versus the statement of the Secretary?

Mr. MEESE. I think that probably the conversation was very benign, in the sense that he said he was probably sending Colonel Sullivan over to talk to me. Certainly, I'm sure, he at no time said anything about there being any problem with this promotion, or it would have registered with me, and I would have then said what I have consistently said to Colonel Sullivan: "that I did not want to do anything, or have anything done, that would be out of the regular military course of action, and in accordance with all the regulations."

Senator DECONCINI. Who did you say that to?

Mr. MEESE. To Colonel Sullivan.

Senator DECONCINI. When did you say that to him?

Mr. MEESE. I said that when we were talking about the constructive credit initially, yes, sir. I believe I also said it at the time that I had another conversation. I think I had at least two conversations with him, although I cannot recall each one distinctly.

Senator DECONCINI. When General Berkman received his reappointment, did he have any discussion with you after that appointment? I mean, did he call you up and thank you——

Mr. MEESE. No, sir.

Senator DECONCINI [continuing]. Or did you have occasion to see him?

Mr. MEESE. I am sure I have had occasions to see him since that time, but I don't believe his reappointment was ever discussed. It is possible I might have congratulated him on it. That is all.

Senator DECONCINI. Now, the Inspector General's report concluded that, "Applicable law, regulations, and administrative procedures were misapplied, violated, or ignored, in order to return Mr. Meese to an active status in the U.S. Army Reserve." That's going back quite a ways.

Mr. MEESE. Yes, sir, and I believe that——

Senator DECONCINI. Let me just finish. Without this transfer to active status, you would not have been eligible, obviously, for promotion. How do you respond to the Inspectors General's——

Mr. MEESE. First, by quoting the rest of the Inspector General's report, which goes on to say that Mr. Meese had no knowledge of any of these things, and also by referring to the conclusion in the independent counsel's report, which states on page 279, "There is no evidence that Mr. Meese had knowledge that improper actions were being taken to return him to active status in the Army Reserve."

Senator DECONCINI. Mr. Meese, you now know the Inspector General made this statement. You did not know it at the time. You know that constructive credit was given, and that there was a memo from the Secretary indicating, or General Thurman, indicating that it would be better to wait another year. Your constructive credit was given, and subsequently your promotion was granted in 1983. How do you feel about having that commission? Does that trouble you?

Mr. MEESE. Senator, it doesn't trouble me in this sense. I was fully qualified by the constructive credit for the promotion, and the Army made the decisions, and I felt I had done everything possible to preclude any kind of special treatment or any misapplication of the regulations. In retrospect, I feel that if the proper regulations were not followed, if all of the Army redtape and technicalities were not followed in returning me to active status, still because I was returned to active status and operated on active status, then any irregularities were effectively waived by the Army, and I was properly promoted.

Senator DECONCINI. You don't feel any obligation about receiving that, even now that you know there was applicable laws, regulation, administrative procedures that were misapplied, violated, or ignored?

Mr. MEESE. Well, as the Inspector General pointed out when he conducted an investigation of this matter, I believe in 1983, all of these things could have been corrected by paperwork within the Army. The Inspector General's report was reviewed by the Secretary of the Army and they were the ones that decided that no further action should be taken, and that the promotion should be allowed to continue.

Senator DECONCINI. Yes. I'm not questioning that. You're the colonel, and you have it, and the Army is doing nothing about it. I'm just wondering how that strikes your conscience, Mr. Meese, as right or wrong, now that you know about it, and do you plan to do anything about it?

Mr. MEESE. Senator, Army regulations were not strictly observed by the Army, but I was put on active duty. Many times, Army regulations are not strictly adhered to because people make mistakes—by this I am referring to the Army officials, whoever they were, that misapplied the regulations, and I don't know who they were. I think that was included in the Inspector General's report. The fact that that may happen, it seems to me, does not create any moral problem, as far as I am concerned, in as much as I did serve faithfully, on active duty, in accordance with the orders that I was issued. When the mandatory promotion came up, it would have been different if this had facilitated my promotion in some way, but I came up for promotion on the mandatory board, and was properly qualified for promotion. Again, only a technicality was involved, which could be waived by action of the Secretary of the Army.

Senator DECONCINI. Well, of course, it's a little different than a technicality. The Inspector General indicates that procedures were misapplied, violated, or ignored; one of those three things. Maybe that is a technicality in your judgment. I do not know that your argument is not sound, that someone else committed those. You didn't do it. My question is, How does that strike you? Do you think there ought to be a change in the rules on technicalities? Should there be a higher standard for someone who serves in the White House, or a high Government official, as it relates to these regulations, or——

Mr. MEESE. Senator, I think that the Army should follow its own regulations. I think that when the Inspector General found that there were irregularities, that would be the time for the Army to make a decision, "Do we go ahead?" This investigation was carefully conducted. Is there any basis, for example, for rescinding the promotion? I think they found that there was not because I was qualified for promotion. The question is, Was there a basis, then, for returning me to an inactive status? They found that there was not. Now, I might say that my present status, which I voluntarily took a year ago, is that I am returned to the retired status, on the basis that I could not hold a high executive office and also continue in the Reserve.

This was a regulation that came out, I was informed about at that time, and again——

Senator DECONCINI. It came out after——

Mr. MEESE. No. The regulation was in effect at the time I was nominated for Attorney General, that you could not hold a high executive position, a Cabinet position as head of a department, such as the Attorney General does, and continue in the Reserve. I immediately requested to be returned to the Inactive Reserve on that basis.

Senator DECONCINI. And you're in the Inactive Reserve now at the rank of colonel?

Mr. MEESE. I'm in the Retired Reserve. Yes, sir.

Senator DECONCINI. In Retired Reserve at the rank of colonel?

Mr. MEESE. Yes, sir.

Senator DECONCINI. What's the difference between the pension benefits of a lieutenant colonel and colonel?

Mr. MEESE. I do not know.

Senator DECONCINI. Is it a few dollars, a few hundred dollars a month, or, do you have any idea?

Mr. MEESE. I am not even sure what the whole pension is, let alone what the difference is.

Senator DECONCINI. Would you be so kind as to supply that for us, for the record, the difference of those two figures.

Mr. MEESE. I'll see if I can find out. Yes, sir.

Senator DECONCINI. Thank you. Mr. Meese, we had some discussions last year regarding the National Narcotics Border Interdiction System. I think the record will show that I praised you for your effort, and I still do. What will be your involvement in this, as you see it, if you are confirmed as the Attorney General?

Mr. MEESE. Senator, as we discussed previously, under the new Comprehensive Crime Control Act, and the drug provisions of that act, the Attorney General has the responsibility of serving as Chairman of a Narcotic Enforcement Policy Board. My responsibilities, if confirmed, would be to chair that Board, which coordinates the efforts of the various departments and agencies of the Federal Government that are involved in narcotic enforcement, including that interdiction system.

Senator DECONCINI. Do you favor the continuation of the National Narcotics Border Interdiction System?

Mr. MEESE. Yes, sir. I definitely do. I think it has been successful, a major advance in this field, and one to which I am personally committed to, having been one of the architects of the original system.

Senator DECONCINI. Are you aware of any effort to restructure this system solely within the Department of Justice?

Mr. MEESE. I am not aware of any such attempt, and I think that it is much better to utilize all the resources of the Federal Government, which include those in the Department of Transportation, namely, the FAA and the Coast Guard, those in the Department of the Treasury which include the IRS and the Customs Service, and to some extent, the Alcohol, Tobacco, and Firearms Bureau.

Senator **DeConcini**. So you would oppose NNBIS becoming restructured into the Department of Justice?

Mr. **Meese**. Well, when you say restructured, there may be some improvements in the structure. I do think that the Department of Justice should have a greater role in the leadership of the interdiction system, yes.

Senator **DeConcini**. Do you think the Attorney General should take over the head of it, instead of the Vice President?

Mr. **Meese**. Well, I think under the law, the Attorney General, by statute, has the responsibility for heading up the entire narcotic enforcement effort. Whether the Vice President should remain involved is an issue that I would have to discuss with him. I think his personal support has been a very big factor in the success of the interdiction system.

Senator **DeConcini**. That's the so-called drug czar you are talking about, is it not?

Mr. **Meese**. Well, I have never referred to it as the drug czar. Some do.

Senator **DeConcini**. Well, I just say that for clarification, but the National Narcotics Border Interdiction System is not the same?

Mr. **Meese**. As presently constituted is not the same, but it would be folded in under the total narcotic enforcement system.

Senator **DeConcini**. So you are saying that it is going to come underneath the National Narcotic Coordinator, who is the Attorney General?

Mr. **Meese**. Yes, sir.

Senator **DeConcini**. So we're not going to have NNBIS, then, as it is now constituted?

Mr. **Meese**. You might have the National Narcotics Border Interdiction System, but it would have to be coordinated with, and be part of the total narcotic enforcement effort.

Senator **DeConcini**. Mr. Meese, are you aware of the tremendous amount of marijuana that is cultivated in our 50 states.

Mr. **Meese**. Yes, sir.

Senator **DeConcini**. And are you aware that it is grown in 48 out of the 50 States?

Mr. **Meese**. I am not specifically aware of that, but I am not surprised.

Senator **DeConcini**. In Virginia, that marijuana is now the largest cash crop in the State, surpassing even tobacco?

Mr. **Meese**. I have seen newspaper reports to that effect.

Senator **DeConcini**. If that is true, and if we are having an epidemic of marijuana in the United States from Hawaii to—well, I was going to say Vermont, but Maine——

Senator **Leahy**. It's too cold in Vermont. [Laughter.]

It's always under snow up there. Nobody will smoke white marijuana.

Senator **DeConcini**. I am sure no one smokes it up in Vermont.

Senator **Leahy**. Oh, there are out-of-staters.

Senator **DeConcini**. What do you plan, if anything, as Attorney General, to do to try and rid our country of this growing going on right at home, and do you have any recommendations to Congress?

Mr. **Meese**. Well, Senator, I would certainly be very much supportive of eradication programs which are now going forward. I have had the opportunity to support the efforts of the Drug Abuse Policy Office in the White House, and the Department of Justice, in these eradication programs. I would like to see them expanded in cooperation with State and local law enforcement officials, and I think that would be one very salient way of eliminating the marijuana crops.

I would also perhaps like to explore and perhaps seek legislation regarding, if this becomes necessary, the importation of marijuana across State lines, but I do not have a precise recommendation to the Congress at this time.

Senator **DeConcini**. You are familiar with the air interdiction program----

Mr. **Meese**. Yes, sir.

Senator **DeConcini** [continuing]. That NNBIS is involved in, and particularly under the auspices of Customs?

Mr. **Meese**. Yes, sir.

Senator **DeConcini**. The airplanes and other equipment that have been transferred or purchased—transferred from the Department of Defense, or purchased for this program?

Mr. **Meese**. Yes, sir.

Senator **DeConcini**. How do you feel about that program?

Mr. **Meese**. I feel the program is definitely a step in the right direction. I believe that some additional equipment, and some additional resources may possibly be devoted to it, to strengthen the effort that is going on at the present time.

Senator **DeConcini**. Do you see any reason or justification to remove it from Customs?

Mr. **Meese**. At the present time, I do not, Senator.

Senator **DeConcini**. You and I have discussed the Posse Comitatus Act at various NNBIS meetings, and I appreciate your comments. Also, the Senator from Vermont was asking you about cooperation, whether or not it was as full as it might be. What is your attitude toward the Posse Comitatus Act? Does it grant enough flexibility for the military to be exposed, or involved. Or, in your judgment, could it be expanded to permit the military to actually be involved in the arrest during peacetime, the deployment of certain equipment during peacetime? Do you have any comments on the Posse Comitatus Act?

Mr. **Meese**. Yes, Senator. I have looked in to this act quite extensively, and have participated in the conference called by the Department of Defense at which other agencies in the Government participated, to try to work out a coordinating mechanism between the Department of Defense and the other law enforcement agencies.

I would say at this time, that I think the very effective legislation regarding the Posse Comitatus Act which was passed, largely as a result of the work of this committee, is sufficient legal authority for Armed Forces use, and Armed Forces resources use, at the present time.

I am not very keenly interested in having military personnel making arrests in a peacetime situation, and I think that the resources, the equipment resources, the training resources and the other things, short of making arrests, can be made available under the current legislation.

I think what is needed is perhaps more resources actually being made available, and is something which I would like to discuss, with the Secretary of Defense, if I am confirmed as Attorney General.

Senator **DeConcini**. Do you think the military, under the present Posse Comitatus Act, can operate the equipment in the pursuit, which ultimately results, or might result in an arrest by a law enforcement official?

Mr. **Meese**. It is my understanding that they can, Senator, as long as the actual arrest itself is made by law enforcement agents. For example, the Navy has followed ships that they suspect of carrying illegal drugs, and Coast Guard crews, being law enforcement officers within the meaning of the Posse Comitatus Act, have been helicoptered out to the Navy ships. Then they actually make the arrests.

Senator **DeConcini**. So, likewise, the Army could be involved in the pursuit with combat troops, or troops in helicopters, of a smuggler into this country. In your judgment, is there any problem, if a law enforcement official is making the arrest?

Mr. **Meese**. I think as long as the military role is in the operation of the equipment, this is provided for in the Posse Comitatus Act change.

Senator **DeConcini**. Even if it is solely for the purpose of pursuing a potential drug interdictor?

Mr. **Meese**. That is my understanding, Senator. If I found that that was not the case, or that there were defects in the current legislation, or areas that did inhibit the proper use of the military in assisting law enforcement officers, I would be pleased to discuss that with this committee, and come before you with legislative proposals, if I am confirmed.

Senator **DeConcini**. Would you be adverse to amendments to the Posse Comitatus Act if, in fact, military could not be used in every effort except the arrest effort, the actual, physical arrest?

Mr. **Meese**. Providing that the expansion of the military effort was limited essentially to handling the equipment that was involved in the surveillance and pursuit.

Senator **DeConcini**. Mr. Meese, I'm sorry to return to an uncomfortable line of questioning, but I do want to go back to the Army commission. That will be my last question.

Yesterday we discussed the problem that I have with your confirmation. Having gone through what you have gone through, the image, right or wrong, it has certainly been portrayed that you skirted the law or that special treatment was given to you or that you were insensitive. The independent counsel says no criminality. We will hear from the Ethics Office. You have stated that you never intentionally did anything wrong.

My question is, If you're confirmed, what do you plan to do with that commission and your Army retirement? Are you going to attempt to suggest that the rules be changed, that there be a different standard for high Government officials, White House aides, as well as Cabinet officials, or are you just going to kind of let it roll along and let the next person worry about it?

Mr. **MEESE**. Senator, several things. First of all, I think it should be clear that my only motivation in returning to active status in the Reserve was to serve as I have, with honor and considerable achievement over the past quarter of a century. That was my only purpose, my interest in being a part of the Army Reserve, and particularly pursuing a Reserve career when I left the Government.

Senator **DECONCINI**. Wait a minute. You're saying one of your motives was not to be promoted to colonel?

Mr. **MEESE**. No, sir. At the time that I received the return to active status, I didn't even know I was coming up for the mandatory promotion board.

Senator **DECONCINI**. You didn't have any idea that you might be considered for promotion and be a colonel?

Mr. **MEESE**. Oh, I thought that at some time I would be, that at some time in the future I would be coming up for promotion, but that was not my primary reason for wanting to return to an active status, nor, I believe, was that discussed at the time.

Senator **DECONCINI**. Is it fair to say it was your secondary reason?

Mr. **MEESE**. I don't think I thought——

Senator **DECONCINI**. Or one of the reasons that was in your mind?

Mr. **MEESE**. I don't even think I thought about it at the time. It was primarily getting back into the Army Reserve.

Senator **DECONCINI**. You are, indeed, a remarkable person. Almost everyone I know in the military, Reserve, Active or Inactive, pretty well knows where they are on the promotion list. They're interested in being promoted, and when they go on active duty or they miss a year of good time, they're concerned about it. They try to make it up. I say to you, you're quite a remarkable person if your statement is that it never occurred to you or it wasn't on your mind at all about being promoted to colonel.

Mr. **MEESE**. Senator, at the time that I came back on to active status, I had been on the retired list, I think, for 2 or 3 years, so I didn't know where I was in the promotion chain at that time. And so, obviously, I'm sure that in the back of my mind was the expectation that at some point in the future I would be eligible to be promoted to colonel. But that was not my primary or even a secondary motivation in coming back on Active Reserve.

Senator **DECONCINI**. When you spoke to the Reserve Officers organization, where the idea first came about of returning to active status, Active Reserve status, you don't recall any discussion with Sullivan or anybody else at the time? Do you recall talking about the possibility of becoming a colonel, or getting a promotion?

Mr. **MEESE**. I don't believe so; no, sir.

The point I wanted to make, in answer to your question, was that the pension or retirement benefits were in no way a part of my consideration at the time. Any increase in those benefits was not something that I considered at the time that I did——

Senator **DECONCINI**. Setting aside the retirement or pension benefits, the increase in rank from lieutenant colonel to colonel?

Mr. **MEESE**. As I say, that was not my primary motivation. It was not something that I particularly considered at the time I came back in. As to what I would do in the future, I think that I have done one thing, and that, of course, is to return to the retired reserve, which was made necessary for a variety of reasons that I mentioned to you. Certainly during the time that I'm Attorney General I will not be drawing any benefits of any sort.

Furthermore, I believe that it would be good, and I would certainly cooperate with any effort to be sure, that the requirements of the regulations and any other technical requirements are absolutely adhered to in the case of any high official, just as they should be with anyone else.

Senator DECONCINI. However, when you become 60 years old and you decide to retire, of course, you will have the benefits of the pension and the benefits of a colonel?

Mr. MEESE. Yes, sir.

Senator DECONCINI. And that doesn't trouble you? From the standpoint of what you've been through in this application and this ruling——

Mr. MEESE. Well, Senator, I don't know of any way to reverse that process. I have already returned to a retired status. The promotion was found by the Army to be validly conferred upon me, so I don't know any alternative.

Senator DECONCINI. Well, what I would hope, Mr. Meese—and I'm not going to suggest what you do—but I would hope you would take an active role. The independent counsel verified that you didn't know what was going on. I would hope that you would be concerned enough to involve yourself as Attorney General with the Department of Defense and to urge them to change their regulations, and to adhere to the regulations. Perhaps you could urge Congress to provide new laws or something that would correct this problem, because I think it leaves a blemish on your record. One that is explainable, perhaps, but nevertheless is there. I think that's unfortunate for you. I think it's unfortunate for the Office of Attorney General if you're confirmed—and that's just an opinion of this Senator.

Senator BIDEN. Will the Senator yield for a second on that one point?

Senator DECONCINI. I would be glad to yield.

Senator BIDEN. I don't understand, Mr. Meese, why you just wouldn't—is it possible—and I don't know all the military regulations—why you wouldn't, knowing what you know now, just say "I don't want to be a colonel; I want to go back to being a lieutenant colonel".

Mr. MEESE. I don't know how you can do that.

Senator BIDEN. You don't know how you can do that? You can't voluntarily be demoted?

Mr. MEESE. Not that I know of, and I don't think it would be right if I did. I don't think you can.

Senator BIDEN. All right. You may be right about that part, but boy, I sure think it would be right if you could.

Mr. MEESE. Senator DeConcini, if I might, in responding, say that I certainly would be willing to do whatever was necessary to assist the Army in properly applying their regulations, particularly to high governmental officials.

I might also point out in response to a question you asked me yesterday, if I may, that I have continued to consider the things that I might do as far as making sure that there was even increased public confidence in me, if I were confirmed as Attorney General. I believe there are steps I would take in regard to my financial affairs, such as filing a declaration of a financial statement on an annual basis with the Office of Ethics, and making full information about my financial situation available in that form.

Senator DECONCINI. Mr. Meese, let me say you're saying things to me that ring a good bell and a good tone, and I wish you would consider doing something constructive about your Army Reserve status and your promotion. I'm not going to suggest what you do or tie any conditions on it as to how I may vote on it.

But I think those are real problems. I realize you don't have to give up something that you have, or adjust it or extend yourself a step further than the law or the ethics standards require. You don't have to do that. But I am very concerned about the image of this office and the image of Mr. Meese if he's confirmed to hold this office.

I don't say that in a lecturing manner, although it may sound like it. I say that as someone who believes this is truly the highest office of any law enforcement agency in the Nation. We need to minimize the amount of criticism that may be directed toward that individual. Certainly these things are going to be continued to be brought up. If you're in charge of some criminal prosecution, for someone violating some Army regulation, certainly the charge is going to be "Well, he did it," whether you did or didn't. It can be refuted. I only mention that on the record, and I'm glad you had a further statement about our discussion yesterday, because that helps me, quite frankly, believe that you're serious about the problems that you have faced and perhaps completely overcome.

Mr. MEESE. Yes, Senator, I appreciate that.

Also let me say, as far as the Army is concerned, I believe I did take an extra step beyond what the law requires a year ago when I requested the return to the retired status, rather than continuing to draw benefits until such time as I was actually confirmed.

Senator HATCH. Would the Senator yield for a short comment?

Senator DECONCINI. Yes. Mr. Chairman, I'm through questioning, so I would be glad to give up the time.

I want to thank Senator Heflin again for his courtesy in letting me go on as long as I have, and the Chairman.

Senator HATCH. If I could just make one comment.

I personally believe, Mr. Meese, that if you voluntarily did what Senator DeConcini might find appropriate under the circumstances, you would be criticized for that also. No matter what you do here, people will find fault.

Senator DECONCINI. Mr. Chairman, if I could have the floor again.

Senator HATCH. Mr. Meese, your difficulties really can't be resolved by voluntarily doing anything at this point.

Senator DECONCINI. Well, if the Chairman would yield——

Senator HATCH. Certainly.

Senator DECONCINI. I'm not going to tell him what he ought to do. There's a lot of things he could do, and that's his conscience and he's got to decide. In just thinking about the question I asked him yesterday, he decided that he would make an annual financial statement that isn't necessary. To me, that's important. There's a lot of things he could do here regarding this commission and about the future of it. That's what this test is, at least in this——

Senator HATCH. I do not differ with that. I'm saying that you need to consider the fact that, no matter what he does, it's going to be criticized.

Senator DECONCINI. I'm not too sure.

Senator HATCH. I'm quite positive.

Senator DECONCINI. Mr. Chairman, if I could have one more moment, I would like to have in the record the memorandum from General Thurman, I believe, to Mr. Marsh, Secretary Marsh.

Senator HATCH. Without objection.

Senator DECONCINI. This was transmitted to Mr. Meese.

Senator HATCH. It will go in the record without objection.

[The material referred to follows:]

DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20310

January 18, 1985

NOTE FOR MR. ROBERT J. SHORT, CHIEF INVESTIGATOR, COMMITTEE ON THE JUDICIARY

Attached is the November 1, 1982 memorandum of General Thurman that you requested.

John J. Pavlick, Jr.
Assistant to the General Counsel

Attachment

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF
DAPE-ZA

1 NOV 1982

MEMORANDUM FOR CHIEF OF STAFF, ARMY

SUBJECT: Reserve Component Promotion of Meese, Edwin III, 567-30-8505, Selective Service System

1. As you know, the Reserve Component 06 Promotion Selection Board is currently on-going. The board is due to adjourn approximately 19 November. LTC Meese is in the zone of consideration by the board.

2. AR 135-155, Promotion of Commissioned Officers and Warrant Officers other than General Officers, Army National Guard and Reserve, states that the education requirement for promotion to the grade of 06 is completion of Command and General Staff College or in the case of Selective Service officer, the ICAF National Security Management Course. LTC Meese's military education level does not meet either requirement. According to the DA Board roster, he has completed Officer Advanced Course. Therefore, in accordance with the LOI issued to the board members, LTC Meese is ineligible for promotion and cannot be promoted unless his military education level is changed. (It appears that almost all of the 2,500 folks on the eligible list are educationally qualified.)

3. LTC Meese is assigned to the Selective Service System. AR 135-155 states that for SSVC officers, completion of the Industrial College of the Armed Forces National Security Management Course is equivalent to C&GSC. Since LTC Meese sits as a member of the National Security Council, it would appear that he is eligible for constructive credit for the National Security Management Course.

4. AR 351-1, Individual Military Education and Training, covers the granting of constructive credit. Such credit may be granted by Headquarters, Department of the Army to officers who are qualified through length of service, field experience or demonstrated ability. This AR further states that Chief, National Guard Bureau, CAR, TJAG and TSG retain approval authority for their respective components and branches. The procedure for granting constructive credit is as follows: The request with full justification is initiated either by the individual concerned or his commander. The request is then forwarded through the chain of command to OCAR. After review of the request, OCAR forwards the request to the applicable school commandant who reviews the justification in comparison to the course curricula in question. The school commandant then forwards his recommendation to OCAR who is the final approving authority on the request. During FY 82, three out of nine (one of the nine was for C&GSC level) requests for constructive credit were approved by OCAR. However, all approved requests were for company grade officers and none were for C&GSC level credit.

5. As I see it, the following alternatives are available:

a. The Director of Selective Service could forward a letter to CAR requesting that constructive credit for the ICAF National Security Management Course be granted to LTC Meese based upon his experience as a member of the National Security Council. This request could then be expeditiously handled in accordance with the above procedures and if the Commandant of ICAF concurs, constructive credit can be granted.

b. The same procedure as the above, however, request the Director of Selective Service nominate several deserving individuals who he feels should be awarded such constructive credit based upon their experiences within the Selective Service.

c. Chief, Army Reserve could be directed to review LTC Meese's National Security Council experience and determine if it warrants award of constructive credit.

d. Chief, Army Reserve and Chief of National Guard Bureau could be directed to review all personnel currently being considered for promotion who are not eligible due to military educational level and determine if any are entitled to constructive credit.

e. Do nothing this year. In this event, LTC Meese would not be selected for promotion this year. Currently 51+ years of age, he will continue to be eligible for promotion until December 1991. Selective Service officers are not subject to years of service (28) or maximum age (53) restrictions imposed upon other USAR officers. Selective Service officers may be retained in active status until age 60. If this course of action were chosen, application for constructive credit could be pursued in a normal fashion and LTC Meese would then be eligible for promotion next year.

6. It should be pointed out that even if we are successful in granting constructive credit to LTC Meese for the 06 Board currently in session, his selection would not be guaranteed. Promotion to 06 in USAR is done on a "best qualified" basis and out of an eligible population of 2,500, only 610 officers will be selected for promotion this year.

7. My advice is to pursue paragraph 5e inasmuch as no requests for constructive credit for C&GSC level were approved in 1982. I believe we can go about an orderly piece of work--get Chief of National Guard Bureau to have several nominated from the field (State or AG's or Div Cdrs)--order Chief, Selective Service and CAR to do the same and pursue it as a regular and normal affair.

M. R. THURMAN
Lieutenant General, GS
Deputy Chief of Staff
for Personnel

Senator DECONCINI. I thank you, and I would yield to the Senator from Ohio.

Senator METZENBAUM. Just one moment.

Mr. Meese, you just responded to Senator DeConcini that you made no effort to get the promotion and, really, it was not of primary concern to you. I want to point out to you that on page 266 of Mr. Stein's report, it reads as follows:

> After discussing with Mr. Meese the possibility of seeking a waiver or constructive credit he—

That is, Colonel Sullivan—

> Drafted a letter for Secretary Marsh to send to the promotion board requesting the board to, in effect, waive the educational requirement in Mr. Meese's case in light of his qualifications and experience.
>
> Colonel Sullivan then hand-carried this letter to Secretary Marsh and briefed him on the issue of Mr. Meese's eligibility for promotion. Secretary Marsh considered the letter tantamount to an order to promote Mr. Meese and refused to send it.

Now, that flies, as I see it, directly in the face of your statement to Senator DeConcini, that you made no effort to obtain a promotion, were not even interested in it. How you can reconcile your answer to Senator DeConcini with the language of independent counsel?

Mr. **Meese**. First, Senator, my answer to Senator DeConcini was in response to his question about what my motivation was and was directed at the time that I came back from Retired Reserve to an Active Reserve status, which was in June or July of 1981. The promotion wasn't almost until a year-and-a-half later.

Furthermore, the action that Colonel Sullivan took in drafting a letter and hand-carrying the letter was all done strictly by Colonel Sullivan without any knowledge on my part, without any request on my part, without any involvement on my part.

Senator **Metzenbaum**. Then let me just point out to you, then, on page 265:

> At about the time the promotion board convened in mid-October, 1982, Colonel Sullivan learned that Mr. Meese had not finished the NSM course and, therefore, would be ineligible for promotion. After discussing with Mr. Meese the possibility of seeking a waiver or constructive credit——

and then it goes on.

That doesn't sound as though it's without any knowledge on your part. It sounds as if he did it after he had discussed it with you.

Mr. **Meese**. Well, at that time, as I told Senator DeConcini, in answer to his questions, I did, on Colonel Sullivan's recommendation, seek constructive credit. As far as that particular letter that he drafted that Secretary Marsh did not send, I did not know that he was going to do that, nor did I have any part or involvement in that particular letter.

I did have the involvement in requesting constructive credit, which is an entirely different process than what is detailed here.

Senator **Hatch**. Senator Heflin.

Senator **Leahy**. Mr. Chairman, I did not go earlier——

Senator **Hatch**. Senator Heflin had yielded to Senator DeConcini.

Senator **Leahy** [continuing]. I had yielded to both of them just before the session and told Senator Thurmond I would because I had been tied up with the same thing you had earlier, in Intelligence, and I would use the noon hour to find out what questions had been asked so I wouldn't be repetitious.

Senator **Hatch**. I will be happy to referee, but we had agreed to go back to Senator Heflin.

Senator **Leahy**. Well, if that subsequent agreement was made to supersede the first one, I would be happy to stick to that.

Senator **Heflin**. I don't mind. I'll yield. Go ahead. I just had a few questions.

Senator **Hatch**. We'll go to Senator Leahy. Do you know approximately how long you'll be, Senator Leahy?

Senator **Heflin**. You people in the ice, you don't get out much up there, with the cold weather.

Senator **Leahy**. That's true.

Senator **Heflin**. We're the Sun Belt, so we want to give you an opportunity to go ahead. [Laughter.]

Senator **Leahy**. We only take about a quarter as much time to say something, so it will speed it up a lot quicker. [Laughter.]

Senator **Hatch**. Do you know approximately how much time you'll take, Senator?

Senator **Leahy**. Just a few minutes.

Senator HATCH. What I would like to do is have a short 5-minute recess for the court reporter, Mr. Meese, and others. If you'll take 10 minutes, then we'll have a recess at that point.

Is that all right with you, Mr. Meese?

Mr. MEESE. That's fine with me.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Meese, I just want to make sure I understand your answer so we don't leave it loose sitting on the record. In answer to Senator DeConcini's earlier question, you said that in going back on active duty which resulted in a promotion, that the promotion was neither your primary nor secondary consideration. Is that basically what you said?

Mr. MEESE. Yes, it is.

Senator LEAHY. What was your primary consideration?

Mr. MEESE. My primary consideration was to return to active status in the Army Reserve and continue on an Army Reserve career.

Senator LEAHY. And what was your secondary consideration?

Mr. MEESE. My secondary consideration was that when I left the Government, which I intended then and still intend to do at some point, I planned to return to a Regular Reserve position with a unit someplace.

Senator LEAHY. And tell me again, what would be the duties required with this Active Reserve status that you sought, the primary consideration? What would be the duties required for that?

Mr. MEESE. The duties are simply to be a member of the Selective Service System. In my case, I was the liaison officer between the Pentagon and the Selective Service System. It was a position that required me to be familiar with the Selective Service System, and then to perform such active duty—that means a number of days of active duty per year—as the Director of the Selective Service might require.

Senator LEAHY. Normally, how many active days would that be?

Mr. MEESE. In my case it was about 12 days per year, every other year.

Senator LEAHY. So every other year you would have about 2½ weeks that you would have to——

Mr. MEESE. No, sir; it was 12 days, 12 actual days. That would be 2 weeks.

Senator LEAHY. OK. If you went on a 5-day work week, it would be 2½.

Mr. MEESE. The Army considers it a 7-day work week.

Senator LEAHY. Well, the Senate considers it an 8-day work week, but that's OK.

So you felt you could take those 12 days off?

Mr. MEESE. Yes, sir, and I did do that and took that instead of taking vacation.

Senator LEAHY. And being on active duty, those few days that you were on active duty, what did you do during those few days?

Mr. MEESE. I did various things. I traveled to the Selective Service headquarters in various regions of the country; I went to the Selective Service data processing center and was briefed on their activities there. I traveled to Germany and visited Army units there, particularly the enlisted personnel. I believe I also put in some time at special briefings in the Pentagon.

Senator **Leahy**. Did you get paid for that as a military officer?

Mr. **Meese**. Yes, sir, on the days that I served on active duty.

Senator **Leahy**. And did you get your regular White House pay, also?

Mr. **Meese**. Yes, sir.

Senator **Leahy**. In a recent New York Times editorial in the last couple of weeks, there was one entitled "Pay the Meese and Jordan Bills."

Are you familiar with that?

Mr. **Meese**. Yes, sir. I read the editorial.

Senator **Leahy**. The headline may have caught your eye?

Mr. **Meese**. It was pointed out to me, yes, sir.

Senator **Leahy**. Do you agree with the editorial?

Mr. **Meese**. Yes, sir.

Senator **Leahy**. As a part of last year's confirmation proceedings—and it probably appears to you as though this has been going on for several years; it certainly does to a lot of the rest of us—Senator Thurmond submitted a couple of questions on behalf of Senator Levin for your response. They were submitted on March 7, 1984.

One of these questions was as follows: "Please state what personal knowledge you have relative to President Carter's papers being physically available to the Reagan campaign." Do you recall that?

Mr. **Meese**. Yes, sir.

Senator **Leahy**. And do you recall your response to that, or the response to the committee?

Mr. **Meese**. Yes, sir. I don't recall the exact wording, but I recall the general sense of the response. The documents themselves would be the best evidence of that.

Senator **Leahy**. Let me read from it. In fact, I can have somebody from the staff give you a copy of it. While it's coming down, I'll read the response I have.

"I have no knowledge of any effort by the 1980 Reagan-Bush Presidential campaign, or anybody associated with that campaign, to obtain from the Carter administration or the 1980 Carter-Mondale Presidential campaign, any private materials or information." The response was forwarded to the committee some time between March 7 and March 9.

Is that an accurate recitation?

Mr. **Meese**. I believe that's correct, yes, sir.

Senator **Leahy**. On March 9, Senator Levin wrote back to you and complained that your answer had not been responsive to his question. In his March 9 letter to you he says, "I also asked for any personal knowledge that you had relative to the Carter papers being physically available to the Reagan campaign. Instead of answering the question, you said that you knew of no effort by the Presidential campaign to obtain the papers. Again, your answers were unresponsive. I did not ask whether the Reagan campaign made an effort to obtain them, but about your personal knowledge relative to their being physically available to the Reagan campaign," the foregoing being a quote from Senator Levin.

He then asked you to respond to his original question. Did you respond to that, to the March 9 letter?

Mr. **Meese**. No, sir. As you may remember, these hearings were suspended at that time, and since the original questions had been propounded to me through this committee, and since the hearings were suspended, I did not feel that a response was appropriate at that time.

Senator **Leahy**. Well, then, after that, on December 21, 1984—this was after the Stein report and after it had been stated we would go back into hearings on this—Senator Levin wrote to you again. He identified eight memorandums that were written during the 1980 Presidential campaign.

Now, you were named in five of them as the recipient. The five memorandums are memorandums from Bob Garrick to you, dated September 4, 1980; another memorandum from Bob Garrick to you dated September 12, 1980; a memorandum from Dick Allen to Governor Reagan, Bill Casey, Dick Wirthin, and you, dated October 15, 1980; a memorandum from Max Hugel to you dated August 11, 1980; and a memorandum from Dan Jones to Bob Garrick, Bill Casey, and you, dated October 27, 1980.

In your response with respect to these five, as well as three others that don't list you as a recipient, was the same. And I quote from your letter: "In response to the question set forth in your December 21, 1984, letter, I do not remember seeing, during the 1980 Presidential campaign, the documents described in your letter."

Just to make sure so we have it for our record here, do you recall seeing any of those memorandums described in Senator Levin's letter during the course of the 1980 Presidential campaign?

Mr. **Meese**. No, sir, I do not.

Senator **Leahy**. Senator Levin's December 21 letter also asked you to respond to the following question: "Did you, during the 1980 Presidential campaign, believe or have any knowledge that copies of nonpublic documents from the White House or Carter campaign were physically available to or in the possession of the Reagan campaign."

Can you tell me what your response was, your January 23 response, to Senator Levin?

Mr. **Meese**. Yes, sir. I'm reading it now from the copy which you kindly furnished to me.

"To the best of my recollection, during the 1980 Presidential campaign, I did not believe or have any knowledge that copies of nonpublic documents that had been improperly obtained from the White House or the Carter campaign were physically available to or in the possession of the Reagan campaign. Nor was I aware of nor did I believe that a source or sources inside the White House and/or the Carter campaign was improperly providing nonpublic information to the Reagan campaign."

Senator **Leahy**. Of course, there are some who would claim that probably—well, let me go to this.

Aside from any questions of whether they were properly or improperly obtained, whether somebody in the Reagan campaign made an effort to obtain or didn't make an effort to obtain these documents, did you, during the 1980 Presidential campaign, believe or have any knowledge that copies of nonpublic documents from the White House or the Carter campaign were physically available to or in the possession of the Reagan campaign?

Mr. MEESE. Senator, to the best of my recollection, I did not know of any such documents. The reason that I put in the words "improperly obtained," was because I did believe that there were some nonpublic documents that had been exchanged between the Carter campaign and our campaign relative to such things as debates or other matters of mutual interest like that. But I did not know of such documents precisely.

Senator LEAHY. Were you aware of any documents, Carter or Mondale documents, available to the Reagan campaign of a nature that you, certainly within your experience, could assume that either Mr. Carter or Mr. Mondale would not know were there?

Mr. MEESE. No, sir, in the sense of them institutionally.

Senator LEAHY. That's what I mean, sure.

Mr. MEESE. In other words, one of their aides might have drafted the documents and they wouldn't precisely know.

Senator LEAHY. But you understand the type of thing I mean?

Mr. MEESE. Yes, sir.

Senator LEAHY. Were you aware of anything that if they were told was there would come as a major surprise to them?

Mr. MEESE. I was not aware of any such document; no, sir.

Senator LEAHY. You said in your March 1984 answer that you had no knowledge of any effort by the 1980 Reagan-Bush Presidential campaign to obtain private materials.

I just want to make sure I fully understand this now. Take out the word "effort." Were you aware of them obtaining any such——

Mr. MEESE. No, sir.

Senator LEAHY. Either over the transom or actually going out after them?

Mr. MEESE. Not to the best of my recollection; no, sir.

Senator LEAHY. Would it be safe to say if there were such you would recall them?

Mr. MEESE. I believe yes, sir, I would.

Senator LEAHY. And these memorandums that list you as a recipient, the ones I mentioned before, you do not recall any of these?

Mr. MEESE. No; I do not. I think, as the independent counsel found, that the volume of paperwork, which is described quite accurately in the independent counsel's report, that inundated my desk was such that I read between 25 percent and a third of the material that actually came to me.

Senator LEAHY. What would you have done if you had gotten unauthorized material, material that you obviously knew would not have been authorized by the Carter campaign?

Mr. MEESE. I think I would have inquired into the source or how it happened to come in the possession of our campaign.

Senator LEAHY. Mr. Meese, I hope you understand my reason for asking this. It is not because I care really so much on what the information was in there. That has been stated by some, and I don't think any of us have to go into that.

My concern is twofold; one, just the procedure of it. I would be asking the same—and I think some of our colleagues who worked with me on confirmation hearings under Democratic administrations know that I state this very honestly. I would be asking the exact same questions if it was reversed and it was a Democratic administration with a nominee where these same issues have been raised.

I ask them, though, because after reviewing your answers, they seem to be so—well, "nitpicking" is the word that came to mind, with no effort made. They seemed to be always qualified. That's why it has taken us a long time in this. You're going to be here before this committee a great deal on a whole lot of things. I would hope that if you feel a question is not directly to the point, then state so. But be very careful about possibly qualifying answers because I think that has created much of the problem here during the past couple of days.

Mr. MEESE. Senator, I think you will find that if I'm confirmed, I will be direct and candid with you and other members of the committee as I hope I have been in these hearings, just as I believe I was in our individual conversations prior to the previous hearing.

I also want to say that in response to a written communication with a Senator whom I have no knowledge of personally, I was trying to be precise in responding to his inquiries. It's a lot easier in conversations such as we're having now to be precise in the sense of knowing what the other person is asking, or to ask that the question be clarified.

Senator LEAHY. Thank you.

Mr. Chairman, I give you now the gold star for brevity on that. I have other questions, but unless something unexpected comes up in other Senators' questions, I will be submitting them for the record.

The CHAIRMAN. Thank you very much.

The distinguished Senator from Alabama, Mr. Heflin.

Senator HEFLIN. Senator Hatch had indicated we would take a break for the court reporter and for Mr. Meese at this time. I'll be glad to go ahead. However, some may have anticipated the recess, they may be disappointed. I wouldn't want to disappoint anybody.

Whatever the chairman would like to do.

The CHAIRMAN. Would you like to take a 5-minute recess now, Mr. Meese?

Mr. MEESE. Senator, I will defer to the committee. I'm prepared to continue.

The CHAIRMAN. We'll go ahead then with you, Senator Heflin, and then take a recess right after that.

Senator HEFLIN. Mr. Meese, they have asked you about why you went back into the Reserve, and maybe facetiously at that time you saw your best chance of being called "General" in the future. You're pursuing a different path to being called "General" now.

But I still have some questions about this. Perhaps you can clear up some of these matters.

In January 1977 as a lieutenant colonel, you had not completed the Command and General Staff College, the CGSC, within 3 years after being promoted to lieutenant colonel. That was the reason you were required to enter the Retired Reserve at that particular time.

By Retired Reserve, I believe you have to be 60 before you draw any pay or any retirement pay.

Mr. MEESE. Yes, sir; that is 60.

Senator HEFLIN. It seems that this Command and General Staff College could be taken by correspondence course or you could go to Fort Leavenworth for a series of courses. The footnote says that basically it teaches junior and mid-level officers about Army command and the relationship between such command and the civilian command structure.

Now, when you went back on active status, was this still the same educational requirement that you had to pursue when you went back on active status, or did it change?

Mr. MEESE. It changed somewhat, Senator. This was still one way of fulfilling the requirement, but because of the mobilization designation position that I was given with the Selective Service System, an alternative way to satisfy the requirement was by taking the national security management course that I referred to earlier in answer to questions from Senator DeConcini.

Senator HEFLIN. Now, I gather from your testimony that you were in a position where you could be given credit for on-the-job training—and that your service on the National Security Council might have acted as the equivalent of the type of training and education that the Army Reserves required.

Is that correct?

Mr. MEESE. That's correct, Senator, in the sense that that was a part of it. The other part of fulfilling the requirements was the other experience that I had gained in my civilian capacity on the cabinet of the Governor of California, where my duties included the management supervision of the California National Guard, and other experience that I had had during the interim period.

Senator HEFLIN. I suppose there are other people in other positions that could follow the same path you followed who occupy a civilian position but also receive Reserve commissions. Could they also obtain credit for their jobs?

Do you know whether that exists?

Mr. MEESE. It's my understanding that it does, although I don't have specific knowledge of any particular individual.

Senator HEFLIN. Well, I would assume that people that are civilian employees in the Department of Army who also hold Reserve commissions might be in a similar position.

Now, I assume that your National Security Council activities and work is somewhat classified. Do you know whether or not the Inspector General, in his review of the constructive credit that would be given to you, whether he reviewed the agenda, and activities, of the National Security Council, or was that classified and beyond his purview?

Mr. MEESE. Senator, I do not know whether he reviewed it or not. I am sure that sufficient information could have been declassified or sufficient unclassified information could have been given to him if, in fact, he had wanted to review it.

Senator HEFLIN. You did not have any relationship with General Berkman on the promotion; he only acted on the allowance of constructive credit for the educational requirement that you required; is that——

Mr. MEESE. Yes, sir; that is my understanding.

Senator HEFLIN. How long have you known this Colonel Sullivan?

Mr. MEESE. I have known Colonel Sullivan since the Sacramento days. During the time the President was Governor, he was the head of one of the departments of California State government, I believe the department of commerce there. Then, when I left California State government and he did also, he was the one who contacted me—I was in a different Reserve unit—on whether I would be interested in assuming a position with the 351st Civil Affairs Command, of which he was one of the senior officers. That was my next connection with him.

Then we served together, I guess, for almost 2 years in that capacity.

Senator HEFLIN. Is he in the Reserves in Washington, and was he, at the time you came here?

Mr. MEESE. Yes. I think during the previous administration he was placed on extended active duty and was on a variety of assignments in the Pentagon and was doing that when I arrived here.

Senator HEFLIN. Had he become activated and was he full time?

Mr. MEESE. Yes, sir.

Senator HEFLIN. What was his status? He seems to be quite a man about town. I mean, he gets things done. We may want to advocate having him transferred as a senatorial liaison.

Mr. MEESE. Senator, he was on full-time active duty. He was a Reserve officer serving on full-time active duty with the Pentagon at the time that I arrived here in Washington.

Senator HEFLIN. Is he still around?

Mr. MEESE. No, sir; I believe his term of duty has been completed and he is now in private business. I don't know whether——

Senator HEFLIN. He didn't become a general?

Mr. MEESE. No, sir, he did not.

Senator HEFLIN. General Berkman, as I understand it, was here when you got here. Had he served as the Chief of the Army Reserves prior to the Reagan administration?

Mr. MEESE. Yes, sir; he was appointed during the previous administration.

Senator HEFLIN. Do you know what period of time he occupied his office?

Mr. MEESE. I believe it's a 4-year term of office.

Senator HEFLIN. And he came up and requested—well, he was reappointed for another term of office?

Mr. MEESE. Yes, sir.

Senator HEFLIN. And this is when you spoke to Secretary of Defense Weinberger and I believe Marsh, in his behalf?

Mr. MEESE. Yes, sir; I was asked by the Reserve Officers Association to speak to the Secretary of Defense, and I believe the Secretary of the Army, to pass on their feeling that he should be continued for a second term.

Senator HEFLIN. Was your conveyance to them a recital of the fact that the Reserve Officers Association was interested in the reappointment, or did you add your personal words of recommendation to it? What is your recollection as to what you recall concerning the words that you spoke to Secretary of Defense Weinberger?

Mr. MEESE. My best recollection is that I passed on the strong recommendation of the Reserve Officers Association officials.

Senator **Heflin**. Did you speak to anyone else? Did Secretary Marsh——

Mr. **Meese**. I may have spoken to Secretary Marsh about it, also, passing on essentially the same information.

Senator **Heflin**. I understand from what you have testified that General Berkman had nothing to do with your promotion. The only matter he had anything to do with was the granting of constructive credit for your experience, the type of work you were doing, and the correspondence courses that you had taken concerning the educational requirements?

Mr. **Meese**. That's my understanding, Senator. Now, I don't know all the internal workings of the Department of the Army, but it's my understanding that the awarding of constructive credit was something that he had to approve, whereas it's also my understanding that the promotions are strictly within the province of the promotion board.

Senator **Heflin**. Mr. Meese, I suppose, after reviewing all of this, we are left with the question in our mind as to your ability to recall. You don't recall a great number of things. Perhaps because of the volume of your business transactions. I've had difficulty sometimes in recalling a lot of conversations, where my staff tells me I agreed to do certain things and so forth.

Do you have some type of mechanism now by which you try to record conversations? What do you do basically to help you retain conversations and decisions that you make? Is there a procedure or a mechanism that you follow?

Mr. **Meese**. Yes, there is, Senator. First of all, may I say that in the course of the independent counsel proceedings I must have answered literally hundreds of questions and provided hundreds or perhaps even thousands of details to the independent counsel. So I think it is not particularly significant that on a few occasions, a relatively small number—I think somebody counted up in the 50's—I was not able to recall something. I don't think that's unusual with the literally hundreds of people that I see every week, well over a thousand pieces of paper and communications that are received by me, and the dozens of appointments and meetings that I have almost every day.

So I think that, by and large, my ability to recall has been fairly good and certainly every intention was to respond as fully as I possibly could to the independent counsel. I have been very careful, however, not to testify under oath to things as to which I do not have an actual conscious recollection at the present time, because I take that oath very seriously.

As far as the mechanism that I have, I have adopted a number of mechanisms. One is that when I am engaged in telephone calls or meetings myself, I have a notebook in which I keep notes of these conversations for the purposes you have indicated.

Also, in meetings that I have with people, it is generally my habit to have an assistant there to serve as note taker, to write up a summary of those meetings, including any decisions that I make or any actions that I take or should take in the future as a follow-up.

Senator **Heflin**. A number of instances that have been raised here deal with the early beginning of your service as counselor to the President. Is there any professional staff in the Office of the President that carries over from one administration to another in order to acquaint the officers of a new administration, the President's inside men, his counsel, and his chief? Do you have some sort of professional staff there at the White House that stays there and is available to give information, lawyers or counsel who might point out Executive orders that have been issued previously, regulations, and also the various laws?

Mr. MEESE. Senator, the only professional ongoing staff in the White House is generally in the clerical and administrative ranks. There are no people that were available to me who would be ongoing professional people who would give me guidance as the counsel or to the President in matters pertaining to regulations, the other matters that you mentioned in your question.

Senator HEFLIN. Is there an effort made to bring in, say, the Republican administration coming in, former people who sat in the same areas of concern, instead of a complete new team coming in? Senators have got the same problem. Most of us are fortunate to have staff that have been here, that can guide us.

Many of these instances occurred in the beginning of the Reagan administration. Were steps taken to have some expertise, and knowledge, relative to pitfalls that might confront you as chief counsel, or Mr. Baker or Deaver, on William Clark, other than, of course, spending some time reading the regulations, reading the law and things of this sort?

Mr. MEESE. Senator, some people who came to the White House did have prior Government experience, Federal Government experience. A few had prior experience in the White House. Some of the members of the legal office in the White House had been there previously in subordinate positions.

In my office I did not have anyone in a professional capacity who had prior experience either in Washington or in the White House.

Senator HEFLIN. Is legal counsel available through the Department of Justice, where part of the duties of the Attorney General is to give legal advice to the President and his staff? Is there a body there that you could call on for advice to go through this transition?

Mr. MEESE. Yes, sir, there is the Office of Legal Counsel within the Department of Justice that is available to the Attorney General, and as I have indicated to other Senators in response to their questions, if confirmed, I would rely heavily upon the advice of that office for guidance in a number of these matters as far as the office of Attorney General is concerned.

Senator HEFLIN. Well, do they have people that, can move in and be with you for the first several months through this transition?

Mr. MEESE. Senator, yes, there are. I would obviously depend heavily on that kind of advice and assistance.

Senator HEFLIN. Mr. Meese, I have studied your financial background. You have been in government, in the Reagan administration, and then out as a teacher and a lawyer. How old are you?

Mr. MEESE. I'm 53, Senator.

Senator HEFLIN. In your financial disclosure statements you have not accumulated any wealth and, like a lot of people, I suppose you spend more time taking care of other people's business than you do your own. That is always a lawyer's observation, that lawyers look after other people's business rather than their own.

Looking over your financial situation. I certainly feel as though you've had opportunities, if you were of the avid proclivity or the propensity to be dishonest, you could have had the opportunity to do it in the past, but you didn't. You do not seem to have acquired any wealth, which is evidence of your honesty in the past. Since the independent counsel cleared you of any criminal wrongdoing, then it comes down to ethical considerations entirely. Of course, there are a number of these.

But I appreciate the openness with which you have testified. I want to be fair to you and fair to the American public in trying to discharge our duties as Senators, to advise, and consent. But with this, I will conclude and listen further.

Mr. MEESE. Thank you, Senator.

The CHAIRMAN. We will now take a 5-minute recess.

[Whereupon, the committee was in recess.]

The CHAIRMAN. The meeting will come to order. Let's see. Senator Hatch, do you have any questions?

Senator HATCH. No, Mr. Chairman, I do not. I reserve the balance of my time.

The CHAIRMAN. The distinguished Senator from Delaware, Mr. Biden.

Senator BIDEN. Mr. Chairman, I have a whole bookful of questions that are left to be asked, and as we broke for lunch, Mr. Meese, I began to question the wisdom of pursuing all the details of each of these transactions that are in question, that have been raised. And began to ask myself—and I'll only take about 10 minutes, Mr. Chairman, and then I won't say any more. And I want to say this with Mr. Meese here, not after the fact. That is why I am doing it now.

I began to ask myself, why is this the hardest, most difficult nomination that I have been confronted with in 12 years in the U.S. Senate? Why, for me, was it so difficult? And it was not until just after lunch, when I got back here, it all of a sudden became clear to me, what has been bothering me so much for the last year.

Mr. Meese, I think it's fair to say, and some of my colleagues on my side might say it slightly differently—I think it is fair to say I have been fair, in the sense that I have not gone after you. As a matter of fact, my Democratic colleagues, some, on occasion, most I suspect, have felt that maybe I wasn't, you know, fulfilling my role as the ranking Democrat on this committee, and, quote, "going after you enough" or "being tough enough", or whatever. And it has just recently become clear to me why this has been so difficult for me to resolve. I have been disturbed by the fact that you, in my view, have been a victim of some in and out of Government, in and out of the press, who have opposed you in fact on ideological grounds, but they have gone after you on non-ideological grounds, and done it, in my view, unfairly, on occasion. Not unlike conservatives in this body, and out of this body went after Ted Sorensen, when he was mentioned as a possibility in the Carter administration, in early 1977. And my reaction to that treatment of you offended my sensibilities, and I think, in retrospect, blinded me a little bit as to why I was having difficulty.

In addition, I found myself reacting to the hypocrisy of some who, in and out of the press, in and out of politics, who have never felt the pressure of being in the position of finding it hard to find $500 for their family, as it was to find $500,000 dollars. I think that also blurred my vision a little bit.

And in addition, I will be very, completely candid about this, I felt a sense of kinship with you because of your family situation which is not unlike mine. And that I think also blurred my vision a little bit. But I have concluded that you are a personable and likable man. I have concluded that you have done no criminal wrong, and I do not believe you are unethical. And I could not figure out why I am going through all this detail with you, in the office and out of the office, about your ethical standards, and why it was bothering me so much, and yet, I would sit in staff meetings and they would point out this and that, and the other thing. And I would talk to the Common Cause people who would come and see me, and so on.

And I just never found a case about that you are—I have not been able to conclude in my mind, you are an unethical man. I have not been able to make that conclusion.

So if all those things are there, why, why do I find it so difficult to vote for you? And I finally figured it out. It relates less to you than it does to the Office of Attorney General. I think some would say that I probably—and some will comment after my comments here—that I have maybe an idealistic and unrealistic view of the Office of Attorney General. But I think it should be occupied by a person of extraordinary stature and character.

I thought to myself that Ronald Reagan, a man who I have deep philosophic disagreement with, why it is that in spite of it I like him. And why is it that a man like Nixon who forgot more about foreign policy in my view, than Ronald Reagan will ever know, why is it that I had such a distaste for him? And I thought of things like, I cannot picture Ronald Reagan coming out of the Presidency and selling David Frost an interview. I cannot picture him doing that under any circumstances. Richard Nixon did it. I cannot picture—I do not think that it is sufficient to be ethical, and noncriminal to hold a job.

There are many people in this town, and people who work in this body, and people who are covering you in the press, who are the kind of people that, if they ended their contract, had 7 days sick leave left, and 2 days vacation left, even though it was budget time, and everybody else in the office would be breaking their neck, they would act, not unethically, not illegally. They would insist on their 2 days.

I could not say they are unethical. I could not say that they were, did something illegal, but something would bother me about that. And as I said and listened the last 2 days, to your answers to questions, as indicated, I concluded that you have not committed any wrong per se. For example, it is not unethical, in my view, it is not illegal, for you to have gone on Active Reserve and been promoted to colonel, in light of the facts that you knew at the time.

But it does bother me, and I believe it is beneath the person who should hold the Office of Attorney General, that after knowing what the Army did to go out of their way in fact to grant you special favors, no matter how you cut it, it was a special favor, and then not give up your commission, give up your commission to be Attorney General of the United States of America. I think that is beneath the office.

I think your refusal to recuse yourself, or at least acknowledge the extent of your involvement with Mr. McKean, even in the unofficial meeting of everyone around the table is beneath the office. It is not unethical; it is not illegal. I think it is beneath the office.

And I think your willingness to get reimbursement that you did not expect to get, when you were working on the transition team, even though you deserved it, even though you did the work, even though it was ethical, and even though it was technically correct in my view, I think is beneath the person who should hold the office.

Your involvement with Mr. Barrack, in my view, is not illegal, is not even unethical. Most of the folks around here cannot understand that there are people who just want to help, and there is no return of a favor. But it bothers me a great deal, that when the time came, the second time around with Mr. Barrack, getting the second appointment, where it came up before the group on which you sat, for you not to say, "By the way, that guy helped me out." I don't mean helped me out in terms of he lost money.

I argued for 4 hours with my staff in a shouting match, how they cannot understand, that that $86,000 that Barrack ended up pulling out of his pocket, as a consequence of giving it to Elkin as a gift, was something a decent man might do, and that you would have no part of. I believed that. I honest to God believed that.

But what bothers me is, when it came time for you to act on him in any way, that you would not just say to everybody around, "Hey, by the way—even if you did not know about the $86,000, even if you did not know anything—even if you did not know anything other than your wife thought he wore a halo, which I can understand—nothing more—to say, "You know, this guy really did me a big favor." I think that is beneath the office.

I do not think it is beneath the Office of Counselor to the President. I do not think is it beneath the office of an assistant whatever, but, the Attorney General, unlike anyone other than possibly a Supreme Court Justice, is not so much their importance constitutionally, but they are in fact implicitly, they are supposed to be, in my view, the beacon, the citadel of what young lawyers should aspire to.

And I would expect more. I would want the young lawyers of this country to aspire to the standard that says, "I must in fact say this guy did me a favor." "I must in fact give up my colonelcy." I must in fact, et cetera, et cetera.

And like I said, I have been here 12 years. Some of my colleagues have been here that long with me, and I think it is fair to say—and it may be self-serving I guess—but I do not think I have ever been this troubled by anything that I have said in the Senate, because I really sympathize with you. I think you are in an awful catch-22 position. Like the attorney's fees. What in the heck can you do? What can you possibly do? What is going to happen is, they are going to turn around, and if the law firm says, "We'll take 300 if that's what the Court gives," people are going to say, "You had better recuse yourself of everything having to do with that law firm. They have done you a favor. There is a $400,000 difference."

On the other hand, if you say, "I will keep that obligation", they are going to say, "Ah-hah, they have got you on the hook." And that is what I kept reacting to, those kinds of things. But now, as I said, and I will conclude, to me, Mr. Meese, the office requires not just an honest and ethical man, which I believe you are—I do not think you consciously sat down and ever did anything wrong, and I do not think you would for a minute. And I mean this sincerely. I hope you know this. I do not think for a minute, when you are Attorney General, that you will wander one one-hundredth of an inch beyond the line of what is in fact legal and technically required. I have no doubt about that.

But it is an attitude—and I finally figured out also why I said to you in my office, "Why do not you just acknowledge that you can understand why people think what you have done is"—so on. And I know what it is for me, and it is that it is just not a high enough standard. But I do not buy that you are unethical, and I do not buy that you broke the law.

I just think, I want a man, or a woman as Attorney General, who would have said to Senator DeConcini:

> You know, Senator, I see it now. I am giving up my colonelcy. Even though I want to be colonel, even though I want to go back to active reserve, even though I want that. I can see how it all looks and to be Attorney General of the United States of America, for me, a lawyer, is the highest honor that could ever befall me, other than possibly being President of the United States or a Supreme Court Justice, so I am going to give it up.

So since I know these facts inside out and backward, and since I am convinced there is nothing that you have done unethical, I will politely sit here and listen to Archibald Cox and everyone else. Unless they come up with something that is not in here, it does not make a whole lot of difference to me now, because for me, it relates to a higher standard. You have demonstrated to me in your responses, you are not willing to step up to, even though you are ethical, and even though you have not violated any law, inadvertently or advertently. Thanks for the time, Mr. Chairman. I yield the floor.

Mr. MEESE. Mr. Chairman, may I respond to the Senator?

The CHAIRMAN. You may respond, Mr. Meese.

Mr. MEESE. Senator, I would hope that as you have listened to my responses, and as you think them over, that you will find on further reflection, because of my willingness to answer any other question that you or any other Senator may have, that I do meet the high standards that you set, because I share those standards for the office. I think that when I talked with you in your office, I mentioned to you, that I thought this was the Nation's most important office, next to that of the President. I feel that way.

I feel that for over 25 years, every act that I have done, every conscious effort that I have made, has been to uphold the highest standard of any position in public or in private life.

If I had the chance to do over some of the things that we have talked about, I would do them over. I think I have indicated that on several occasions today.

I indicated that yesterday. But you cannot relive history and the decisions that were made at the time were made based upon the most honorable intentions, and acceptance of the highest standards that I knew at the time. I have also indicated to you, and to other Senators, Senator DeConcini, that I would take extraordinary steps, in terms of my financial affairs. I also feel that in terms of the Army promotion, I would appreciate it if there were shown to me a way in which I could properly demonstrate to the public, my concern for the matter, proportional to the Army technicalities that were involved. Those technicalities had nothing to do with either my earning the commission, which I did, or with the fact that I served honorably on Active Reserve status, after being returned, in ways which were the Army's breach of regulations, they were not mine.

Those are things which were described by the independent counsel in his report as technical irregularities, at best, they are not something so major cause as to make it apparent to me then, or now, that I was not worthy or had not earned the commission, or the rank which the Army awarded to me.

But I want to tell you, Senator, that I hold the Office of Attorney General in the highest esteem. The President honored me by being the one who selected me for this position. The President revealed his confidence in me not once, but on numerous occasions during the past year, and again when he renominated me in this session of the Congress.

Now, if you really have that respect for the President, I hope that, as you think about this, you will think about his judgment. He also has the highest standards for Attorney General, and he feels that I am qualified for it.

If there were any doubt in my mind, that 4 years from now you could look back and say, "Ed Meese has fulfilled the standards that I have set for this Office", then I would retire right now and withdraw. But I am confident that I can meet your standards, or anybody's standards, for that Office.

And I can also tell you that if this Senate confirms me, that every ounce of my energy, and every moment of my time, will be devoted to fulfilling those standards, so that you and the others who might vote to confirm me, can be proud of that act, in allowing me to serve the President in the way that he has chosen that I should.

Senator BIDEN. Mr. Meese, I acknowledge you cannot relive history. Why is it so difficult for you to go back and say, "In order to set the right standard for all those people that are aspiring in the practice of law, which is laden with unethical people, that we both know," why is it so difficult for you to go back and say, "In hindsight, it was wrong for me to do such and such," or "I wish I had done it," and just outline it? I mean why do you stick to the technicalities of saying, for example, that, in the meeting where McKean's name came up, it was not a formal meeting. Who the heck cares whether it was a formal meeting? It's irrelevant whether it was a formal meeting. You are a man who is going to be Attorney General of the United States.

Now, looking back on it, couldn't you say that, "You know, knowing what I know now, and having thought about this thing, I should have said, 'You know, I have got a financial arrangement through this fellow's firm'." Instead, I found you and I talking about whether or not it was McKean, or McKean was a trustee of, or McKean was a trustee for—I mean, why is it so hard to say that?

Mr. MEESE. Senator, it is not, and I think I have revealed that today, and yesterday. If I have not answered that, I do not know what I have said to you here.

Senator BIDEN. OK. Well, thank you.

The CHAIRMAN. I think you have answered it. I just want to say that I will have to disagree with my able, ranking member here, about the standards of an assistant to the President should be lower than Attorney General. If anything, they should be higher. He is in a position to influence the President. You are in a position to influence President Reagan on thousands of matters.

I have never heard of any step you have taken that has influenced him in the wrong way. If you were not a man of a right character, you would be a multimillionaire, and here it is, you can barely make your payments on your house. You have had to pay thousands of dollars in interest. You are having a hard time making your payments. If I did not think so, I would have said so, and I would not have—be supporting you now. Character is the most important quality of a person. I think you have got character. I do not think these Republicans here would support him just because they are Republicans. And I do not say they oppose you just because it is politics. But it is mighty strange that over here we are all supporting you, and some over here, I hope not all, are using this forum here to oppose you.

Now so far as your Reserve commission is concerned, I admire you for being a Reserve officer. You had nothing to do with this promotion except to earn it. The Army has not brought out anything here to show that you did anything dishonest. Yes, they talk about perception, perception, your perception may have been wrong. Well, people may have gotten a wrong perception. I am sure a lot of them did. But when the facts come out, when the truth comes out, then that overrides perception, and disperses perception, and dismisses perception.

If the truth comes out, that is what ought to control, and that is what I am interested in. I still will keep my mind open until the rest of this hearing, but what I have heard so far, I am convinced you are an honest man, a man of character, and I feel that you should be confirmed. I say I will still keep my mind open.

Now about your Reserve commission, you have an Active Reserve commission now, do you not?

Mr. MEESE. I am on the retired list now, Senator.

The CHAIRMAN. You are on the retired list. But if your commission were active, or if you were called back, even though you were Attorney General, if we had a war, would you respond to your country?

Mr. MEESE. Senator, I would serve in whatever way the President required me to serve.

The CHAIRMAN. In other words, you would not hide behind the Attorney General's Office or any other office, would you?

Mr. MEESE. No, sir.

The **Chairman**. The distinguished Senator from—Senator Hatch, do you have any questions?

Senator **Hatch**. No. I will reserve any questions I have.

The **Chairman**. The distinguished Senator from Pennsylvania.

Senator **Specter**. Thank you, Mr. Chairman. Mr. Meese, I would like to return to the subjects I was discussing with you when my time ran out this morning, and we were talking about the role of the Federal Government in law enforcement vis-a-vis the State, when my time expired. And I would like to ask you for a moment about the career criminal bill which the Congress passed last year, and what I believe to be your commitment to it, as we have discussed it, and what you would envisage by way of enforcement, and that bill provides, for the first time, a Federal involvement in street crime, by making it a Federal offense for anyone, who is classified as a career criminal—that is, having been convicted of three or more robberies, or burglaries, to be tried in an individual judge calendar, a speedy trial, a mandatory minimum of 15 years to life, without pardon or parole.

And I would like you to comment about that tool in the Federal arsenal against violent crime.

Mr. **Meese**. Senator, I feel that this is another means, and a valuable means that can be used by the local U.S. attorney who can cooperate with district attorneys within the State to handle a certain number of cases. Obviously, this has not been tested yet, but I am looking forward to seeing the results of that, and to seeing how it can be implemented as a way in which the Federal Government can assist local law enforcement.

Senator **Specter**. Mr. Meese, with respect to the prison situation and the Federal courts, diverging for just a moment from the problem of the State courts, the State prisons, and whatever role there might be for Federal assistance there, the current statistics show that there is a significant overcrowding in the Federal prisons. What do you anticipate the future to be with respect to Federal funding, to have enough space to sentence hardened criminals in the Federal system?

Mr. **Meese**. Senator, as you know, this administration has devoted increasing amounts of money, really, the largest amount of money in history, for a prison building program. I would certainly support and continue this, so that we would have adequate prison facilities for Federal prisoners.

Senator **Specter**. Mr. Meese, you speak about crime being a State problem, basically, that I agree with you about, but you say that you look for State funding, essentially on crime, and I do not disagree with that, to the extent that it will be forthcoming, or, to the extent that we do not need some greater leadership role from the Federal Government.

We are facing two problems on the Juvenile Justice Branch, a subject matter which we touched upon this morning, where there is, currently, the office of—the Juvenile Justice and Delinquency Prevention Act makes incentives for the State government not to keep status offenders in custody. That's a term which is really misused. If a child is a runaway of 14, and is found on some town—on the streets of some town in America, that child very frequently ends up in jail. And notwithstanding the incentives on Federal funding for States not to have status offenders incarcerated, we find that there are many, many status offenders which remain incarcerated. And for that reason, I have introduced legislation which would prohibit the States from incarcerating status offenders, putting them in jail. And that raises the issue as to a Federal involvement or a Federal requirement for State governments.

And I would be interested in your view on that subject.

Mr. MEESE. Senator, as to an outright prohibition on the States, not having considered this before, I am not sure, from a legal standpoint, and having of the proper jurisdiction for Federal intervention.

I do think, of course, that having that provision tied to States' receipt of any Federal funds under the Juvenile Justice Act is of course appropriate.

Senator SPECTER. And there is a related problem about mixing juvenile offenders with adult offenders, and the result is that the adult offenders end up teaching the juveniles how to be more expert in a life of crime. Now there, again, the States have monetary incentives, but many States are not fulfilling that responsibility.

I would like you to take a look at the proposed legislation from a viewpoint of some Federal enforcement here. There have been some Federal court decisions which say that it's a denial of due process of law to have status offenders in jails. And it seems to me that we ought not to wait for the courts to declare it unconstitutional, but ought to establish the Federal standards as a matter of legislative policy.

Mr. MEESE. I would be happy to look at that, Senator, in line with the court decisions that have already been rendered.

Senator SPECTER. The final question I want to take up with you, Mr. Meese, is the question of the District of Columbia, and the crime problem which exists in this jurisdiction, and the overflow prison conditions which we have in the District of Columbia jail, and at Lorton, which houses those who are sentenced in the District of Columbia, and that really is a mixture, so to speak, of some of the traditional State responsibilities, and the Federal responsibility.

Recently, there was a hearing in the District of Columbia Subcommittee on Appropriations, where the Mayor or the District of Columbia indicated a willingness to move ahead with prison construction, and the U.S. attorney commented about the need for that kind of prison construction.

And I would be interested in your view as to a possible Federal commitment to be of assistance, given the dominant Federal role in the District of Columbia.

Mr. MEESE. Senator, I would be happy to look into that with you, because of this unusual relationship which I think is different than the relationship between the Federal Government and the normal city-State situation, I would be glad to work with you, to see what might be done, consistent with other arrangements that have been made between the Federal Government and the city.

As you know, this administration has tried to work with the District to provide necessary funds for a number of mutual interest, and I think we would have to look at this as a part of the overall

Federal funding of District activities. But I share your concern, particularly for the prison problem here, and would be glad to look in to it with you.

Senator SPECTER. You made a comment about the desirability of using Federal lands for State prisons. Do you think that might be applicable, to find some Federal land, perhaps in the District of Columbia, which could accommodate the prison needs for the District?

Mr. MEESE. I think it's entirely possible that we would look into that, and perhaps find some lands of that sort.

Senator SPECTER. Thank you very much, Mr. Meese. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The distinguished Senator from Arizona. Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, thank you. I think I have satisfied myself, Mr. Meese. I thank you for the time that you have spent, and the earnestness that you have put forward in responding to questions, agreeable or disagreeable. It's a difficult process. But I, like you, and like Senator Biden, take it very seriously, and I am satisfied that you have responded to the questions that I have asked you, and I have no further questions, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Ohio. Mr. Metzenbaum.

Senator METZENBAUM. Mr. Chairman, I will ask some questions to clarify some lingering matters, but I am frank to say, that many of these questions have been ably and thoroughly explored by my associates on this committee in the last 2 days, and I don't intend to be repetitious, but I do have some concerns that still remain. And I would like to say that I think it is clear that this committee has, for various and sundry reasons, continued concern about this appointment.

Some of them have to do with ethical questions. Some have to do with the matter of legal issues. Some have to do with the matter of being sensitive, and some, as the distinguished Senator from Delaware puts it, a concern for the Office of Attorney General, and the kind of person who should hold that position. It is obvious that the members of this committee have done a tremendous amount of research, have spent a lot of time themselves, as well as their staffs, on the issues that are before us. And there is no question that there has been thoughtful and able interrogation.

I am frank to say to you, Mr. Meese, that I came to this hearing with a book about yea thick, and I spent much of the noon hour taking out pages where I felt that Senator DeConcini, or Senator Heflin, or Senator Baucus, or Senator Biden, or Senator Mathias, or Specter, or others, had traveled that route. And in some instances, your answers would be the same kind of answers that I would elicit. I might take issue with those answers, but I don't think that merely prodding further would serve any useful purpose.

I am going to ask you some additional questions. I will not be lengthy because, as I say, I have eliminated a good number of the inquiries that I had. And frankly, I also believe that you have been patient with this committee, and you have sat through a long and tedious session, and it does not serve anybody's purpose just to go over the same material.

So I will just begin at this point, and some of this may sound a bit repetitious, and where it is, it is only because I may be laying a foundation for some further question.

Did you, during the time you were associated with the trust, did you ever submit any bill for services? That is the organization that paid you the $10,000.

Mr. **Meese**. You mean other than the arrangement that I made with the people who were in charge of the trust, after receiving the $10,000? The answer is no.

Senator **Metzenbaum**. When you say the people in charge of the trust, were you not actually the head of the trust?

Mr. **Meese**. No, sir. I had nothing to do with the trust.

Senator **Metzenbaum**. Who was in charge of it?

Mr. **Meese**. I believe that as the independent counsel's report says, it turns out that it was Dan Terra, and I believe William French Smith. I believe that Helene Von Damm was also involved. I had no involvement with the handling of that fund.

Senator **Metzenbaum**. Did you, at the time you deposited the check, at that time did you plan to submit a bill for consulting fees?

Mr. **Meese**. No, sir. At the time I received the check, I thought it was for moving expenses.

Senator **Metzenbaum**. And if the travel expenses and moving expenses had been—had you received a check for $15,000—would then that have been the amount that you would have been paid for consulting fees?

Mr. **Meese**. Senator, I doubt it. It is possible I would have. I don't remember what my computations were, but at the time, the $10,000 was well below the amount of compensation that I would have been entitled to at the regular hourly rates.

Senator **Metzenbaum**. Now you are described in the report—that is, the independent counsel's report, as having directed and established the Planning Task Force. You just indicated that you had nothing to do with the Planning Task Force?

Mr. **Meese**. No, sir. I said that I directed—the report says that, and properly so—that I directed the establishment of the Reagan-Bush Planning Task Force. The creation of the fund to support that task force, the handling of its disbursements, and the decisions as to the use of both the collection and the disbursements of those funds, all was handled by other people.

Senator **Metzenbaum**. Do you know whether Mr. Deaver, Mr. Clark, Mr. James or Miss Von Damm ever submitted a bill for services?

Mr. **Meese**. I do not know whether they did or not, Senator.

Senator **Metzenbaum**. The checks were changed from travel expenses to consulting fees—and that was the case in connection with all of them, as I understand it. Is it not a remarkable coincidence that you, Mr. Deaver, Mr. Clark, and Mr. James all performed just about the same amount of services for just about the same amount of money? In other words, each received $10,000. Mr. Clark received, I think, $9,964, or something, because there was not that much money in the account. Does everybody get paid at the same rate? Is that not a remarkable coincidence that everybody gets paid $10,000 for consulting fees?

Mr. **Meese**. Senator, I cannot answer for the others. I do not know the circumstances under which they were paid. I can only answer for myself, and the arrangement that I made with the people responsible for the trust fund.

Senator **Metzenbaum**. Now yesterday, Mr. Meese, you responded to questions from Senator Leahy with the following statements. Senator Leahy: "But you do recall that when you learned of these problems, you asked Miss Von Damm to change the records of the trust to reflect the payment from the trust was for consulting services, not moving expenses?" You responded:

> I did not ask her to change the records per se. What I did was, I said I did not want to accept moving expenses because I felt I did not even want to question about it, and that therefore, the only way I would accept any money from the transition trust fund was on the basis that it would be for compensation for service rendered, in other words, consulting fees.

Now that is what you said to Mr. Leahy first.

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Later you said: "I therefore asked them to change their records to show the appropriate basis on which I received the money. That was done, to the best of my knowledge." Now, do you recollect those statements?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Now the independent counsel's report states on page 346, in referring to you:

> He stated that upon learning of this problem, he talked to someone, probably Miss Von Damm, and told her the records of the trust should be changed to reflect the fact that the payment to him was for consulting services.

As I understand it, then, once you said to the committee, that you did tell someone to change the records. Once, you told the committee you did not, and you told the independent counsel that you did tell someone to alter the records.

Now did you or did you not tell Miss Von Damm to change the check stub and the check to read travel—consulting fees instead of travel expenses?

Mr. **Meese**. The answer, Senator, the full explanation is that I talked to her, to the best of my recollection, about the basis on which I would receive the compensation, and then said that the record should be corrected to accurately reflect that basis. All three of those statements are perfectly consistent.

Senator **Metzenbaum**. If you think so, I'll just go on. I don't want to quibble with you.

Mr. Meese, the report of the independent counsel cites you as recalling that you talked to someone at the trust, probably Helene Von Damm, to tell her that the records of the trust should be changed to reflect consulting fees.

A Washington Post story of June 2, 1984 concerning the checks issued by the trust, and the fact that the notation "moving expenses" on the check was altered, includes this statement:

> E. Robert Wallach, a lawyer for Meese, said the White House counselor had no idea who was responsible for blacking this out. 'Ed Meese has no knowledge of that at all under any circumstances.'

Now, isn't that statement by Mr. Wallach false?

Mr. **Meese**. Not to my knowledge, Senator. I don't know who did the actual work of correcting the records. I talked to someone—I believe it was Ms. Von Damm—but I don't know whether it was her, the bookkeeper, or someone else who may have had the technical responsibility of correcting the records.

Senator **Metzenbaum**. But he made the statement that Ed Meese has no knowledge of that at all under any circumstances. Do you think that statement is correct?

Mr. **Meese**. I think it is, because I don't know who did the actual job. Now, I have learned since the independent counsel's report who probably did it. But I did not know at the time because I had never seen any of those records.

Senator **Metzenbaum**. But you were the one who told her to see that it was done, didn't you?

Mr. **Meese**. That's right, but I don't know who actually did the physical work of correcting the records.

Senator **Metzenbaum**. So when he said that you had no knowledge of that at all, you say that's accurate?

Mr. **Meese**. As to who had actually done the work, I did not have that knowledge.

Senator **Metzenbaum**. I'm not talking about the matter of the detail, changing the language. I'm talking about the question of Mr. Wallach representing to the public that you had no knowledge of the issues. You had no knowledge of this under any circumstances.

Mr. **Meese**. I don't know precisely what Mr. Wallach was referring to, but I assume, and it certainly is consistent with my other answers, that if he was referring to my actual knowledge of who had actually done the work of correcting the records, if he was saying that I did not know that, then he would be consistent with what I've testified to.

Senator **Metzenbaum**. Mr. Chairman, I'd like to offer the copy of the Post story for the record.

Mr. **Meese**. I would certainly hope, however, Mr. Chairman, that we're not relying on the Washington Post as accurate evidence of anything.

Senator **Hatch**. He's just making a record, Mr. Meese. And we'll admit that without objection into the record for whatever value it may have.

[The newspaper article referred to above follows:]

[From the Washington Post, June 2, 1984]

MEESE, OTHER REAGAN AIDES PAID BY $150,000 TRANSITION TRUST

(By Mary Thornton and David Hoffman)

In the months before President Reagan's 1980 election victory, a special trust fund of $150,000 was raised from private donations to underwrite a computerized personnel search for a possible Reagan administration. About six close Reagan associates were given money from the trust after the election, according to the trust's chief fund-raiser, Daniel J. Terra.

Terra, now the administration's ambassador at large for cultural affairs, said yesterday that the Presidential Transition Trust also fund two other officials: Attorney General William French Smith and M. Peter McPherson, administrator of the Agency for International Development.

The trust made lump-sum payments of up to $10,000 each to Reagan aides who included White House counselor Edwin Meese III, deputy chief of staff Michael K. Deaver, Interior Secretary William P. Clark and Helene Von Damm, ambassador to Austria.

The payments have come under scrutiny because of inquiries into Meese's personal finances by a court-appointed independent counsel in connection with Meese's nomination to be attorney general.

Sources said yesterday that the $10,000 check Meese reported in November, 1980, was labeled "moving expenses," but that Meese had been informed before making the deposit that it should be considered a consulting fee.

The sources said Meese and others had raised legal questions about whether a payment for moving expenses was proper. The moving expenses notation was "blacked out" after the deposit, sources said.

E. Robert Wallach, a lawyer for Meese, said the White House counselor had no idea who was responsible for blacking this out. "Ed Meese has no knowledge of that at all under any circumstances," he said.

Meese testified under oath in his Senate confirmation hearings, that he paid all of his moving expenses in 1980–81 from his own pocket. He did not inform the Senate of any moving expense reimbursements and has said that the coste of moving was a financial hardship.

The trust was created to underwrite a computerized personnel system in the event Reagan won the election, according to Terra. This politically sensitive task was performed in an office in the northern Virginia suburbs by E. Pendleton James, an executive recruiter who is a longtime associate of Meese, sources said. James assisted by Von Damm, they added.

James, who later became the White House personnel director and is now a New York executive recruiter, said in a telephone interview that he received some compensation from the trust but could not remember the amount or reason for the payment, James said his records of the payments were locked in a file cabinet along with the key, which had been left inside by mistake.

A spokesman for Smith did not respond to inquiries about what role he played as a trustee and whether he contributed any of the money.

Terra said yesterday that he had responsibility for fund raising, and that McPerson handled the day-to-day operations, including any payments.

Asked about the $10,000 check to Meese labeled "moving expenses," Terra said. "I'm sure there was no intent to do anything improper. It is important to me that I didn't know anything about this. I know nothing about these blacked-out checks.

"I wasn't that closely involved," he said, Terra what was Reagan's national campaign finance chairman, said he could not provide names of contributors to the trust but added that records exist and will be made public soon. He said the trust limited contributions to $5,000 per family, and he categorized the larger contributors as "early" Reagan supporters.

Terra also was a fund-raiser for a second private transition fund, the Presidential Transition Foundation Inc., which raised $727,000 from individuals. Meese was president of this group and received $12,352 in compensation. The foundation, formed after the election, was established to defray expenses of the transition, for which Congress also appropriated $2 million.

In soliciting private contributions for both groups, Terra said, he avoided mention of any possible jobs for donors.

"As far as I'm, concerned, I never promised anyone anything in return," he said, "I wouldn't touch that with a 10-foot pole."

Sources said yesterday that records of donors and expenses for both groups are expected to be made public soon, perhaps as early as next week. The trust had promised in 1980 to disclose these details but never did.

A Senate Judiciary Committee source said that an inquiry had shown that the trust never filed a return with the Internal Revenue Service.

The foundation, however, filed returns for 1980 and 1981 as a tax exempt organization: Ellen Murphy, a spokesman for the IRS, said yesterday that the foundation is not on the agency's list of tax-exempt organizations and that she could not make any further comment. An informed source said the application is still pending.

McPherson refused through a spokesman to comment on the operations of the trust.

John Elam, who was a law partner of McPherson during the transition, said in a telephone interview yesterday that McPherson "acted as lawyer for the trust. He did not provide any day-to-day management for the trust. He didn't make any decisions or have any knowledge at that time about any specific expenses of the trust."

Terra said, "I think we paid Peter McPherson because he had operational responsibility." But Elam said that the only compensation went directly to the law firm and not to McPherson. He said he did not recall what the sum was.

The independent counsel probing Meese's finances, Jacob A. Stein, has requested records relating to Meese from both transition funds. This is part of a larger inquiry focused mainly on loans and financial assistance that Meese received from people who later got government jobs.

In the instance of the $10,000 check to Meese, sources, said he held it for about 10 days before depositing it. The sources said that Meese and others at the time questioned the legality of the payment. One source said the questions centered on the "moving expenses" designation.

The sources added that, before Meese deposited the check, he was informed that the payment would be considered a consulting fee instead of moving expenses. The sources said they didn't know who advised Meese of this change.

Senator **METZENBAUM**. Mr. Meese, I think you have enough trouble with this committee without taking on the Washington Post, too.

Mr. **MEESE**. I'm just in the interest of accuracy, Senator.

Senator **METZENBAUM**. Mr. Meese, let's say you are Attorney General. A Cabinet secretary calls you up. Says, "Mr. Attorney General, I just received a $10,000 check from my old company to tide me over, because my Government salary is too low. And I have already deposited the check in my account. Now, I'm told by the lawyers that a private company can't supplement my salary. However, Mr. Attorney General, I can think up some reason to explain that the company owes me some money. Extra dollars for special work while I was with the company, or to pay me for a party I once gave at my house and some company employees attended. I never intended to bill the company, but now I'll just say it was payment for that."

Wouldn't that Cabinet secretary be proposing a sham calculated to evade the purpose of the law?

Mr. **MEESE**. Senator, I am not sure. Yes, I think that it is possible that it would be a sham, particularly given the purpose of the gift in the first place, and his knowledge at the time that he was proposing the arrangement that there was something wrong with it.

Senator **METZENBAUM**. Isn't it more than possible? It would be a sham, wouldn't it?

Mr. **MEESE**. It would appear to me, without knowing all the facts. But on the basis of your hypothetical, yes.

Senator **METZENBAUM**. Now, Mr. Meese, you testified to this committee and elicited our concern when you said that you paid all your expenses for moving to Washington out of your own pocket.

Here is what you told us:

> "Senator Hatch: If I understand correctly, you had to pay all of your moving expenses as well. Mr. Meese: That is right. Senator Hatch: And all of the costs of bringing your family back here as well? Mr. Meese: Yes, Senator. Senator Hatch: And all of that came out of your own pocket? Mr. Meese: Yes, sir."

Now, there was more to the story at that time, wasn't there? There was the story that you had received $10,000 for travel expenses, that you had deposited it in your account, that when you had been advised that it was probably unlawful to receive it for travel expenses, the check and the check stub were changed to consulting fee.

Don't you think that Senator Hatch was entitled to, and the committee was entitled to a fuller statement explaining that you had received $10,000 for travel expenses, and then the balance of the details? If you had it to do over again, wouldn't you have answered Senator Hatch differently?

Mr. MEESE. Senator, I would not have answered Senator Hatch differently as far as paying the moving expenses out of my own pocket. And frankly, at the time it would never have occurred to me that there was any connection, inasmuch as I received the $10,000 as compensation for services, always considered it as such, and paid the income tax on it. It had no connection with moving expenses from that time forward as far as I was concerned.

Senator METZENBAUM. Well, as a matter of fact, you say you always considered it as such. But when you received it, and when you deposited it, it was reimbursement for travel expenses. That is an incontrovertible fact, is that correct?

Mr. MEESE. That's correct. But I say from the time in my discussions with the transition trust officials, that I agreed to accept that compensation, from that time on, I always considered that as ordinary income, as consulting fees. And that's the only thing that would have registered in my mind at the time of the question from Senator Hath some 3 or 4 years later.

Senator METZENBAUM. Now, Mr. Meese, in a previous point in time when Senator DeConcini was inquiring of you about the promotion, he permitted me to have a couple of minutes to ask some questions. And you said that you were not seeking the promotion, or never did seek the promotion, as I understand it.

Mr. MEESE. No, I said that when I came back to an Active Reserve status, my motivation was not to seek promotion.

Senator METZENBAUM. Then why did you seek constructive credit for promotion if you were not seeking nomination?

Mr. MEESE. You're talking about a situation that was a year and a half later—or almost a year and a half later, Senator, when I came up for mandatory consideration by the promotion board.

Senator METZENBAUM. But at that time you were seeking.

Mr. MEESE. At that time, that's right. That's not at all inconsistent with what I said to Senator DeConcini.

Senator METZENBAM. You spoke with Colonel Sullivan about that?

Mr. MEESE. Yes, I believe, or Colonel Sullivan spoke to me. One way or the other.

The CHAIRMAN. Senator, I might mention this: Under the Army regulations, after an officer's been in grade a certain length of time, he mandatorily comes up for promotion. And that's the reason the matter has to be acted on at that time.

Senator METZENBAUM. I thank the distinguished chairman for enlightening me.

Mr. Meese, you told us last March that you had insisted that the Army go by the rule book and not give you special treatment. You testified "I certainly did not seek special treatment. Indeed, I specifically asked not to have any special treatment. All of the actions which you have described were totally unknown to me."

Then in regard to the Inspector General's conclusion that you were granted preferential treatment you said, "I feel that I was a victim of bad judgment within the Army," as well as some other things that you stated.

Mr. Meese, the Inspector General's report does mention the memorandum written by General Thurman, and discusses its conclusion about special treatment. However, there's no reference to the fact that the memorandum——

The CHAIRMAN. Excuse me, just a minute. I want you to know I'm a general in the Reserve, too. But that was not the General Thurman that you're referring to. I just want to let the record show that.

Senator METZENBAUM. At 5 o'clock my chairman becomes quite a comedian.

The CHAIRMAN. In your eyes, maybe. [Laughter.]

Senator METZENBAUM. All in the eyes of the beholder.

Mr. Meese, the Inspector General's report does mention the memorandum written by General Thurman—not the chairman of this committee—and discusses its conclusion about special treatment.

However, there is no reference to the fact that the memo reached Secretary Marsh, then was sent to you, and then Secretary Marsh called you about it.

Now, I'm aware of the fact that you have previously testified that you have no recollection of having seen the memo or Secretary Marsh calling you about it.

You testified you cannot recall the memorandum which relates only to one subject. And that subject is the question of your promotion. Senator DeConcini has already submitted the memorandum for the record.

I want to ask you a few additional questions, however, about it. First of all, didn't Colonel Sullivan draft a letter for signature by Secretary of the Army John Marsh to grant you a waiver, and didn't Secretary Marsh refuse to sign that waiver?

Mr. MEESE. Senator, I do not know that of my own knowledge, but I see that that is reflected in the independent counsel's report, and so I would acknowledge it on that basis.

Senator METZENBAUM. And didn't this refusal on the part of the Secretary of the Army lead to General Thurman preparing his memo on the possibility of granting you constructive credit?

Mr. MEESE. I don't know whether it led to it or not, Senator.

Senator METZENBAUM. We do know that in point of time, it followed shortly after the Secretary of the Army said no to granting you the waiver.

Mr. MEESE. I don't know that, Senator.

Senator METZENBAUM. I'm trying to tell you, Mr. Meese, that part of the problem that some of us have with your confirmation is your inability to recollect very important matters that we think normal people would recollect. This is a memo written entirely about you. It's written by a lieutenant general, the Army Deputy Chief of Staff for Personnel. The Secretary of the Army calls you about it. He recalls that you returned it to him.

Now, here's a memo, a three-page memo. The only subject of the memo is your promotion, and yet you are unable to recall having seen that and my question to you is how do you explain the fact that the memo was brought to you, has to do with you, and a very important part of your life, but you don't recollect it—you say you didn't see it. How do you explain that to the committee?

Mr. **Meese**. I think it's very simple, Senator. I don't recall it because I don't believe that it ever came to me and that I ever saw it. I believe, and I reflect on this partially because of the independent counsel's inquiry, that Colonel Sullivan probably brought the memo and asked if I wanted to see a memo on the subject of my promotion.

I would have taken the same position then as I always did, that I did not want to see any internal Army documents pertaining to my promotion, because I did not want to have any special information or take any special part, or have any involvement other than what any other Army officer in my position would have.

Senator **Metzenbaum**. But the Secretary of the Army, who is certainly a high ranking official, testifies under oath to the Stein investigators, or to Mr. Stein, that he sent it to you and that he called you.

And you come before us and say, "I don't remember the Secretary of the Army calling me, and I don't remember seeing that memo." There is something in General Marsh's files indicating it was sent. You say, "I don't remember." We have difficulty with that. I have difficulty with that.

Mr. **Meese**. Senator, there is nothing in Secretary Marsh's files showing that it was sent. That's his recollection, and I think that as the independent counsel report shows, he was also vague on all the details of that. All I know is that if he did send it at all—and I have no reason to believe he didn't—it was via Colonel Sullivan, in which case, as I've testified here, I would have said that I didn't want to see any internal memorandum, and that it was entirely up to the Army.

At no time did Colonel Sullivan, Secretary Marsh, or anyone else indicate to me that there was anything wrong with that or that I was not entitled to the constructive credit. Indeed, the memorandum itself says that I was entitled to constructive credit. I might also point out, Senator, that the Inspector General of the Army, and now the independent counsel, have both reviewed all of these issues in detail and all of them have come to the conclusion that I was not aware of any of the things that were going on in regard to this promotion within the Army.

Senator **Metzenbaum**. You say that the memo indicates that you were, indeed, entitled to constructive credit.

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Let me read you excerpts from the Thurman memo:

> AR135-155 states that the education requirement for promotion to the grade of O-6 is completion of Command and General Staff College, or in the case of Selective Service officer, the ICAF National Security Management Course. Lieutenant Colonel Meese's military education level does not meet either requirement.
>
> Therefore, Lieutenant Colonel Meese is ineligible for promotion and cannot be promoted unless his military education level is changed. It appears that almost all of the 2,500 folks on the eligible list are educationally qualified.

And then the Thurman memo goes on to say, and I'm reading now from No. 5 of that memo: "As I see it, the following alternatives are available, a, b, c, . . . d," and I won't read those because I don't think they're relevant.

Mr. **Meese**. I think they are relevant, Senator, because one of the courses of action is that I could receive constructive credit for the national security management course.

Senator **Metzenbaum**. Well, I don't want to burden this hearing with this, but let's see:

> The director of Selective Service could forward a letter to CAR requesting that constructive credit for the ICAF national security management course be granted to Lt. Col. Meese based upon his experience as a member of the National Security Council. This request could then be expeditiously handled in accordance with above procedure, and if the commandant of ICAF concurs, constructive credit can be granted.

Is that the paragraph?

Mr. **Meese**. That's the one, yes, sir.

Senator **Metzenbaum**. And yet we do know that General Thurman then says there are five alternatives. He talks about the fifth one being do nothing this year:

> In this event Lieutenant Colonel Meese would not be selected for promotion this year. If this course of action were chosen, application for constructive credit could be pursued in a normal fashion, and Lieutenant Colonel Meese would be eligible for promotion next year.

In No. 7 he says my advice is to pursue 5(e). Now, it seems to me that you are saying to us, "I wasn't seeking any special privileges or special preferential treatment." You're saying:

> I didn't know that Colonel Sullivan was going over to Secretary Marsh and asking for a waiver. I didn't know that occurred. Yes, it's true, Colonel Sullivan's a friend of mine. But I didn't know that he was doing that. We had talked about my getting promoted, but I didn't know what he was doing. I didn't know that he had prepared a three page memorandum and that he had sent it to the Secretary of the Army. And I didn't know that the Secretary of the Army said that he sent it to me and then he called me about it. I didn't know any of those things.
>
> All of these things were happening without my knowledge.

Now, I hope you can understand that since Sullivan's your friend, Sullivan's the man with whom you spoke first, the Secretary of the Army, Marsh says, under oath, that he called you and sent you the memo. We have some difficulty in understanding how none of this came to your attention, or that you can't recollect any of it.

Mr. **Meese**. Senator, once again I think you're misstating the facts. As I have said here, while I can't recall the phone call from Secretary Marsh, because there was nothing unusual about it and he did not say anything about there being any objection to the promotion or the constructive credit, I don't think that's unusual in the light of the numerous phone calls that I received.

I have no doubt, however, that Secretary Marsh says he made the phone call. He probably did. I know what is always clear, as I've testified, that it's entirely possible that Colonel Sullivan talked to me during that period about the constructive credit, but that I would not have accepted the reading of an internal Army memo, because I did not think it was proper to have that kind of inside information or involvement.

All of that is consistent with my desire to be treated in the normal course of events and not to have any special treatment.

Senator **Metzenbaum**. Let me read to you from the Stein Report: "Secretary Marsh recalled that Mr. Meese did not wish to take any action and indicated he simply wanted to take no position and wanted to stay out of the matter."

Now, that indicates that there was a conversation; that indicates he had called you.

Now, is there any reason whatsoever that this committee should discount the question or in any way reject the sworn recollection of the Secretary of the Army as to what you said to him in a telephone call?

Mr. **Meese**. Not at all, Senator, and that's purely consistent with what I've just testified to.

Senator **Metzenbaum**. It's consistent with what, that you did get the telephone call or you did not?

Mr. **Meese**. It's consistent with the fact that, although I cannot recollect the telephone call, my position would have been that I did not want to get involved in any internal Army deliberations.

Senator **Metzenbaum**. But the Secretary is calling you to tell you that General Thurman does not recommend the promotion, that he recommends 5(e). And you're saying I don't want to get involved, and then just by happenstance you, one of the highest ranking people in the Government, wind up getting this promotion in very short order, as a matter of fact. Isn't that what really happened?

Mr. **Meese**. Not to my recollection, Senator. I think that as the report states, the Secretary of the Army called me about this matter but I told him that I did not want to get involved in any internal Army matters. And that was my position consistently throughout this entire affair.

Senator **Metzenbaum**. Let me ask you a question: Is there a difference between insisting on no special treatment and saying you are taking no position?

Mr. **Meese**. I don't understand what taking no position is.

Senator **Metzenbaum**. Well, I think you said that you "did not wish to take any action."

Mr. **Meese**. That's correct. In other words, I did not wish to take any action in receiving any of the internal Army memorandums, nor did I wish to take any action in accepting or seeking any special treatment.

Senator **Metzenbaum**. And isn't there a difference between saying that you have no knowledge of preferential treatment and telling the Army that you wanted to take no position in a decision that might involve special treatment?

Mr. **Meese**. That is neither the language nor is it the characterization that I would have put on my remarks at that time. But I think that it's clear that I did not want to have any involvement beyond what a person would normally have in this type of an affair.

But I think also, Senator, the Inspector General's report is replete with indications that I requested no special treatment.

Senator **Metzenbaum**. Yes, except that it also includes the fact that when you were told what was transpiring, or what was being advocated, you said you didn't want to get involved instead of saying "then don't do it."

Mr. **Meese**. I was never told what was transpiring, or that there was any reason why I should not receive constructive credit or the promotion.

Senator **Metzenbaum**. If you had it to do over again, and the same situation came up, do you think you might have said to the Secretary of the Army, "If that's what their advice is, then don't do it?"

Mr. **Meese**. If I had known that advice, I would have, Senator, but I was never given that advice.

Senator **Metzenbaum**. Then you want us to believe that the Secretary of the Army was not stating the facts when he testified under oath of his conversation with you?

Mr. **Meese**. No, sir. I feel you are misstating the facts.

Senator **Metzenbaum**. Tell me how I'm misstating, because I am not intentionally misstating them.

Mr. **Meese**. Well, then let me go through it again, if I may. Senator, I have no specific recollection, but after reading the Independent Counsel's report I believe that the Secretary of the Army phoned me to say he was sending Colonel Sullivan over with a memorandum, or phoned me afterwards to ask if Colonel Sullivan had come to see me. I don't know whether it was before or after.

My best reconstruction of this—even though I don't have an independent recollection—is that Colonel Sullivan probably came to see me, said that a memorandum had been prepared by General Thurman—not the chairman of the committee—and that I said that I did not think it was appropriate for me to see any internal Army memorandum or otherwise be involved, and that the decision as to the constructive credit—ultimately, of course, the matter would go before a promotion board—was strictly up to the Army. That's my best recollection and reconstruction of the events.

Senator **Metzenbaum**. Well, then the Secretary is wrong when he says he sent you the memo.

Mr. **Meese**. No, sir. He did send the memo, apparently through Colonel Sullivan, and I did not see the memo because I did not feel it appropriate for me to read it or be involved.

Senator **Metzenbaum**. He didn't say he sent it through Colonel Sullivan.

Mr. **Meese**. Well, I'm telling you, Senator, how I believe it happened, and that's not in any way inconsistent with the independent counsel's report.

Senator **Metzenbaum**. Mr. Meese, in your testimony to this committee last March, in your responses to written questions from Senators, and your responses to questions from the independent counsel, one of the the things that disturbs me and I would guess some others is you have a remarkable inability to recall important documents, conversations, and events. The previous inquiry touches upon that.

My staff counted 79 examples of your failure to recall information in your testimony last March, 18 instances of failure to recall in response to written questions, and over 40 references to failures to recall noted in the Stein Report.

I agree with the distinguished Senator from Alabama, there isn't one of us who sits on this committee or that lives that has instant recall, or that can remember everything that transpires in our daily activities. So, it would be understandable if you forgot minor details, particularly in the life of a man as busy as you and with as much responsibility as you've had.

But over and over again it seems that you can't recall important information, often information that bears directly on whether you have engaged in improper conduct.

For example, Mr. Thomas told the independent counsel that he reminded you in February 1981 of his loan to your wife, but you have no recollection of that. Is that correct?

Mr. **Meese**. Senator, that's correct, and the independent counsel did not put much credence in that either.

Senator **Metzenbaum**. Mr. Thomas also recalls discussing the loan with you in February 1982 at a going away party. He recalls discussing the loan with you again in October 1982 in San Francisco. And you were cited in the Stein Report as recalling such a discussion.

The Stein report states that you discussed the Thomas loan twice with Mr. McKean in the fall of 1982, and you apparently recalled these conversations. Then Mr. Thomas recalls discussing the loans with you again in May 1983. Yet the Stein Report said you stated to investigators that "at the relevant times when he received and signed his financial disclosure forms, he did not recall the existence of the Thomas loan."

How are we to understand this recollection problem in light of all the prior discussions and reminders about that very same loan?

Mr. **Meese**. Senator, as I've testified, as I've testified to the independent counsel, and as I've testified here, it did not register and I did not recall the Thomas loan transaction in conjunction with the form. It did not register in my mind that it should be placed on the form 278.

This matter was thoroughly investigated by the independent counsel, and he found that this inadvertent omission of the information on the 278 was entirely without any wrongdoing or improper motive on my part.

Senator **Metzenbaum**. So you understand, Mr. Meese, I am not asking these questions with reference to right or wrongdoing. I think that issue has been dealt with as far as the criminal aspects, if any, by the Stein Report. I think it's been dealt with as far as the ethical aspects by other members of this committee.

I am only raising the issue in connection with what I would consider to be rather faulty recollection. For example, you were cited in the report as having no recollection of a letter to you from Mr. McKean, dated September 14, 1982, suggesting a longer term on the board. That memo's been discussed previously.

At that time, Mr. McKean had arranged $60,000 in loans for you, and you were 3 months late on the payment due on the first loan. How are we to understand your failure to recall such an important letter?

Mr. **Meese**. Senator, I received literally hundreds of letters in the course of a week. To try to remember a single letter some 2 years before, I don't think that I could. And I don't think that anyone could be expected to.

As I said before, in answer to Senator Heflin's questions, I testified to literally hundreds of questions and related thousands of details to the independent counsel. The independent counsel, and every other person who has examined me in connection with any of the four or five inquiries—all have reached a complete finding of no wrong doing, or no unethical conduct on my part. They have all found that I have testified truthfully.

Senator **Metzenbaum**. I'm not suggesting wrong doing in these questions. I'm not suggesting unethical conduct. I'm raising the question about the ability of a man who aspires to be Attorney General of the United States, and having what I would consider to be a normal ability to recollect, particularly a letter as important as Mr. McKean's which had to do with his loans and the fact that you were going to meet in connection with those loans, the deferral of interest, if my recollection serves me right, and his appointment to a Federal board.

It's not an unimportant letter.

Mr. **Meese**. Well, Senator, you, yourself, have confused the letters. The letter you're referring to didn't come in September 1982. It came to November 1982. And if you can't remember it for just a few moments, how do you expect me to recall something that happened over several years ago?

Senator **Metzenbaum**. It wasn't addressed to me, Mr. Meese. Now, tell me about September 14 letter. What was that? Tell me about that one.

Mr. **Meese**. What one?

Senator **Metzenbaum**. Tell me what was in the September 14 letter.

Mr. **Meese**. I have no idea.

Senator **Metzenbaum**. All right, Mr. Meese, as we discussed earlier, you did not recall Mr. Barrack's visit to your office on September 8, 1982 until you were shown his letter referring to the meeting, even though this occurred only 7 days after the closing on your house sale.

Now, you had mentioned earlier a lot of people come through and "I can't, I don't know all of them." And I can appreciate that. May be 100 people a day.

This is the man who, when you go to diner with him, has a halo around his head, and this is the man who arranged for the sale of your home just 7 days earlier.

And you don't remember his meeting you in the White House?

Mr. **Meese**. Senator, 2 years later after it happened I did not remember it. I might have remembered it at the time, or within a short time after that. But I did not have any recollection. I don't have any recollection today of that meeting.

It was apparently, from all we can reconstruct, a drop-in meeting when he dropped in for a moment unexpectedly and I met him.

Senator **Metzenbaum**. First time you ever met him, though.

Mr. **Meese**. Yes, sir; but I still don't have any recollection of it, nor did he when he testified here in March of last year.

Senator **Metzenbaum**. According to the Stein report, you have little or no recollection of what you discussed at the November 9, 1982 dinner with Mr. Barrack in Georgetown, but you are certain there was no discussion of Mr. Barrack's interest in a position in the administration. Is that right?

Mr. **Meese**. That's the conclusion of the independent counsel based on——

Senator **Metzenbaum**. No, I want your answer, not his.

Mr. **Meese**. I could not remember precisely what was discussed. I think I testified that I didn't think it was discussed, but it might have been discussed. But the independent counsel concluded that it had not been.

Senator **Metzenbaum**. What might have been discussed?

Mr. **Meese**. His interest. I said that I didn't think that I knew about his interest in a Federal job. I believe it's all explained in the independent counsel's report, that it might have been discussed, but that I didn't believe that I had any knowledge of it at that time.

Senator **Metzenbaum**. The independent counsel says:

> Mr. Barrack, Mrs. Meese, and Mr. Meese all stated that there was no discussion at this dinner of Mr. Barrack's interest in a position in the administration or interviews with Cabinet members.

Mr. **Meese**. That is the best of my recollection. That's correct, sir.

Senator **Metzenbaum**. So you remember that there was no discussion of his interest, but you can't remember anything else that was discussed at the meeting.

Mr. **Meese**. No, I do remember. I remember that we talked about family.

Senator **Metzenbaum**. Family, I remember that.

Mr. **Meese**. But as to the precise details of the discussion, I cannot recall something that happened that long ago.

Senator **Metzenbaum**. And you have no specific recollection of the series of conversations with Mr. McPherson about the legal problem in receiving moving expenses—I'm not addressing myself now to that issue. I'm addressing myself to the matter of recollection—although you do recall learning from someone, there would be a problem.

Mr. Meese, a lawyer informs you directly that you have received funds for a purpose that is prohibited by a criminal statute. You are involved. In fact, you may have violated the law—and I'm not suggesting in this exchange with you that you violated the law—but Mr. McPherson says, "I don't think you can do that; I think it's illegal." And they go to the Office of Legal Counsel and they say, "I don't think he can do it. It's probably illegal."

Now, you can't recall anything about that conversation, the conversation you had on that subject. How do you explain that?

Mr. **Meese**. Senator, it was a casual conversation with Mr. McPherson. It did not relate to my personally receiving any money. As he testified to the independent counsel, he didn't know that I had received any money. It was a casual conversation on the general matter of moving expenses being proper. I think my question to him related to someone else.

When I received information from him that it might be improper at that time in regard to my own situation, I made sure that I was not doing anything improper by making sure that any money that I received from the transition trust fund was paid solely on the basis of compensation for services rendered. And I made that clear. The independent counsel found the same thing.

Senator METZENBAUM. Why didn't you tell Mr. McPherson when he told you that, that "Mac," or whatever you call him, "I want you to know I have already received $10,000 in travel fees and I've deposited the check. What do you think I should do?"

Mr. MEESE. Because, I don't think that it came up as a conversation about me. It was a casual conversation generally. And I don't remember all the occasions at the time, but it was probably a conversation on the fly, as we had most of them at that time during the transition, as we were both rushing to other places.

It was not a detailed, deliberate conversation about all those incidents.

Senator METZENBAUM. But you don't remember it.

Mr. MEESE. And so I don't remember the conversation, but I'm sure that was the situation at the time as I reconstruct it from the independent counsel's report.

Senator METZENBAUM. According to the independent counsel's report, Mr. Deaver recalls one conversation with you asking if the government, or someone else, could reimburse him for the costs of moving, and you replied that something might be worked out.

And then he recalls a second conversation in which you told him that "the lawyers" had a problem with moving expenses. Yet you were cited in the report as saying you had no recollection of either of those conversations. Is that correct?

Mr. MEESE. That's correct, and I still don't have that recollection, Senator. And I think in the hectic times that we had in the transition that's thoroughly understandable.

Senator METZENBAUM. Last March you were questioned about the loans to you from Great American First Savings Bank. I asked you was any foreclosure taken, has any foreclosure action been taken or even threatened against you by Great American. You answered, "No, sir, not to my knowledge." But the independent counsel's report states, however:

> The bank once again failed to receive a monthly payment on the three mortgages from the Meeses. On June 17th, 1982 Mr. McHenry wrote to the Meeses demanding payment and for the first time mentioned the possibility of foreclosure.

Isn't a bank threatening to foreclose on your mortgage a significant letter that would be difficult to forget?

Mr. MEESE. Senator, I doubt if I even read the whole letter. I don't have any recollection of it, and the independent counsel indicated that that was just to protect the record as far as they were concerned.

But I don't remember any such letter and have no recollection of it now, nor did I have any recollection when I testified before this committee.

One of the things that the independent counsel found was that at the time I did not have sufficient time to devote to my own personal finances, so a letter coming from San Diego Federal Savings and Loan, or Great American as it's known now, probably would not have gotten a great deal of attention from me.

Senator METZENBAUM. Even threatening foreclosure?

Mr. MEESE. As I say, I doubt if I even read that portion of it.

Senator METZENBAUM. And as Senator Leahy elicited from you before, you had no recollection with respect to the five documents that Senator Levin asked you about, even though some of those were addressed directly to you and others indicated that you were sent copies of them having to do with the Carter campaign issue.

Mr. **Meese**. That's correct, Senator. I do not recall what I may have seen in the way of documents in 1980. If you remember, the independent counsel found that I was literally receiving hundreds of documents every day, and so it's entirely understandable that I would not be able to pick five documents out of that mass of material.

Senator **Metzenbaum**. Mr. Meese, it appears as if you have a chronic recall problem. Maybe no worse than the rest of us. But at least on its face it causes me some concern.

Mr. **Meese**. Senator, again, may I point out that if someone was trying to take 79, or 81 or 50 instances out of thousands of answers, I think any of us could not recall everything that happened some 4 years before.

Senator **Metzenbaum**. In your case, unfortunately, and it may be just a matter of perception on my part, it would appear that some of those failures to recollect have to do with very, very significant details that would be particularly important to this committee.

I'm not certain that that is the case. But it would appear that way.

But you're seeking a job that by its nature involves complex issues that often go on for months and years. Your track record on this question of recollection is quite unsettling. I have reason, I believe, to ask, why do we expect that your memory will be better when you're Attorney General, and how will you be able to keep straight details concerning ongoing investigations, and the myriad activities of the Department? Isn't it a proper area of concern for us?

Mr. **Meese**. I think it is a proper area of inquiry. I don't think that it's a matter that should be of any concern to a fair minded person. I think that I have demonstrated over the 4 years that I've been counsel or to the President, over the previous 25 years in law enforcement activities of various types, and in legal activities, that I have a good memory and that I have an accurate reflection of the matters that I have handled.

As a matter of fact, attention to my official duties is the reason why I did not give as much attention as I otherwise might have, including things that I would therefore remember now to my personal finances were concerned.

Senator **Metzenbaum**. Mr. Meese, when did you first learn of the report by the staff of the Office of Government Ethics on your conduct?

Mr. **Meese**. I don't know of any report, Senator. Are you referring now to the working papers of the staff members?

Senator **Metzenbaum**. I'm not willing to call them working papers. They're not described as such on the documents, and they're not called draft, but let's both agree that we'll call them the papers that were prepared by the two staff attorneys who work for Mr. Martin.

When did you first learn of those papers?

Mr. **Meese**. Senator, I first learned of the document involved—the reason I called it a working paper is because that's what the Office of Government Ethics calls it——

Senator **Metzenbaum**. Except it's nowhere described as such by those who prepared it, nor is it anywhere described as such by Mr. Martin until subsequently.

In other words, the document itself does not in any way call itself a draft or working papers. We'll get into that tomorrow with Mr. Martin, and I don't think it's an issue between you and me. But I think if you and I just referred to the papers prepared by the two staff attorneys, when did you first learn of those?

Mr. **Meese**. As far as the paper itself was concerned, I didn't learn about that until perhaps a few days ago in preparation for this hearing.

The fact that some staff attorneys had some questions about the Stein report, the independent counsel report—I learned about that perhaps 2 or 3 weeks ago, whenever it was brought to my attention. It was on or about the date that I requested my attorneys to talk with Mr. Martin.

Senator **Metzenbaum**. How did you learn about it?

Mr. **Meese**. I learned about it from the White House Counsel, Mr. Fielding.

Senator **Metzenbaum**. And then you talked to your attorneys about it?

Mr. **Meese**. Yes.

Senator **Metzenbaum**. Did you ever talk with Mr. Martin or Mr. Devine about it?

Mr. **Meese**. No, sir. I've talked to no one outside of my own office other than the attorneys and Mr. Fielding. And in preparation of this hearing, representatives of this committee.

Senator **Metzenbaum**. When did you first obtain a copy of the report? Did you say 2 or 3 days ago, or more?

Mr. **Meese**. No, the first time I obtained a copy of the working papers was, I believe, this morning, when I obtained it from my attorneys. It may have been yesterday. When was it given out? I guess it was yesterday afternoon when I probably obtained a copy.

Senator **Metzenbaum**. Mr. Meese, I'm not going to ask you any more questions, and I'm not going to make a lengthy statement. But I want to share with you that some days or weeks ago Senator Biden and I were discussing your matter, and we both were talking about what would happen if you came before the committee—we took up some of these issues, maybe all of the issues that we all know about—and you said:

> I don't think I conducted myself so well in connection with these. I think if I had it to do over again I would not do it in the same manner.
>
> I recognize that that was probably an inappropriate or improper conduct. I should have made a disclosure when I was meeting with others.

And we were talking about how this committee would have reacted had you seen fit to come forth with that kind of representation. I think we both believe that it would have been very helpful to you.

Now, it is fair to say that you've indicated that in some respects you've learned a lot. But when Senator DeConcini was pressing you as to what you would do, I think that your answers were not totally adequate. I don't know how he felt about it.

And I just want to say to you that it is not easy to inquire of an individual who is up for confirmation and to ask searching questions and some questions which may be rather hurtful.

You and I talked the other day, and I have no problem in relating to you as a human being. And I think that I could say to you that I wish that you had come before this meeting when we first opened, and said to the members of this committee that, "there are a lot of things that if I had to do over again I would have done differently," and then you enumerated what they were and, in some instances such as the matter of promotion, perhaps taking some action. I'm forced to tell you that I'm sorry that you didn't. I'm not going to tell you—because I don't know if it would have changed my vote. I will tell you it would have made me think a lot more.

Thank you, Mr. Meese. Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Mr. Meese, the question of how you would conduct the Department's policy with respect to electronic surveillance has been raised. Could you tell the committee what your personal philosophy is with respect to wiretapping and electronic eavesdropping?

As you know, the Supreme Court has expressed itself on several occasions on that subject. But what is your own view?

Mr. MEESE. Senator, as we have previously had the occasion to discuss, I believe that these investigative techniques should be used in a very limited manner, only when absolutely necessary. And then they should be used strictly in accordance with the very careful legislative and regulatory proscriptions which are provided in the law, utilizing the authority of the special court that's been provided for the authorization of the warrants for these type of investigative techniques.

I also feel that there has to be continual surveillance by the appropriate officers within the Department of Justice to see that even the applications for warrants for this type of investigative techniques should not be improperly used.

I have a great feeling of concern about the invasion of privacy, and therefore there should be good reason in every case before even an application is made.

Senator MATHIAS. So you could assure this committee that you would not as Attorney General authorize any warrantless wiretaps?

Mr. MEESE. Senator, that is a commitment that I make to this committee as far as not authorizing anything that is not provided by law.

Senator MATHIAS. One of the concerns that I have is that we are seeing a constant explosion of technology in this field of electronic communication. And new technology provides new opportunities for invasion of privacy, by Government agencies, by one citizen against another. Those provisions of law that you just mentioned do not take into account new technologies for data communication.

For example, as a technical legal matter, some data transmission equipment would not be covered by a strict construction of existing statutes.

If the law does not properly take into account these technical advances, would you advocate a review of these problems created by the advance of technology, and would you support the proper legislation to update the law?

Mr. **Meese**. Yes, sir, I would. I would be pleased, if confirmed, to work with this committee to make sure that new technology and legislation covering it conforms to the spirit of the existing laws relating to electronic surveillance.

Senator **Mathias**. Thank you, very much, Mr. Meese. Thank you, Mr. Chairman.

The **Chairman**. Distinguished Senator from Vermont, Mr. Leahy.

Senator **Leahy**. I have no questions, Mr. Chairman, other than a couple of technical ones I'll submit for the record.

The **Chairman**. Distinguished Senator from Utah, Mr. Hatch.

Senator **Hatch**. Mr. Meese, I have appreciated listening to you. I think you've been candid in responding to all of these questions. It has been a difficult 2 days for you, and I am just glad that it is coming to an end.

Mr. **Meese**. Thank you, Senator.

Senator **Hatch**. Thank you, Mr. Chairman.

The **Chairman**. The distinguished Senator from Alabama, Mr. Heflin.

Senator **Heflin**. I don't believe I have any questions at this time.

The **Chairman**. We're going to wind up with Mr. Meese this afternoon. If any Senator has any questions, now is the time to ask them.

The only reason we will call Mr. Meese back is if he feels that he wishes to rebut some of the witnesses who come on tomorrow.

Mr. Meese, you can attend these hearings or have someone here to listen to the testimony, and then if you wish to come back and rebut anything, we'll give you that opportunity.

But so far as questioning you now, I consider the hearing closed. Is there any objection on either side?

[No response.]

The **Chairman**. I hear none, so the testimony is closed, so far as the Republicans are concerned and so far as the Democrats are concerned.

And Mr. Meese, we'll now excuse you unless you wish to come back and rebut after the other witnesses have finished. And we'll leave that to your discretion.

Mr. **Meese**. Thank you, Mr. Chairman.

[The following questions and answers were subsequently submitted for the record:]

RESPONSE OF THE DEPARTMENT OF JUSTICE TO WRITTEN QUESTIONS OF SENATOR JEREMIAH DENTON

Question from Senator Denton

ANTITERRORISM ACT

The second bill that I introduced (S. 275) created, defined, and provided penalties for the offense of terrorism. Surprisingly, at this time there is no crime of terrorism in the U.S. Penalties in my bill range from five years imprisonment to death. I have two questions for you:

1. Do you believe that there is a need for the creation of the crime of domestic terrorism; and

2. Do you think that the FBI should be given primary jurisdiction over terrorist acts, considering state and local jurisdictional issues.

Response: Every possible measure that could strengthen our ability to deal effectively with terrorist groups should be investigated carefully. With respect to the two specific questions, it is my understanding that while there is no current offense of terrorism, there are federal and state laws which cover every variety of terrorist act. Thus the benefits to be derived from a discrete federal anti-terrorism statute will require further demonstration through hearings and debate.

As for the second question, it is notable that great care is necessary in expanding federal criminal jurisdiction to avoid jurisdictional disputes which could undermine the federal, state and local law enforcement cooperation and coordination so necessary to counter all types of criminal conduct. Since it would appear that federal jurisdiction under S. 275 would depend upon the motivation of the offender rather than the nature of the crime, jurisdictional disputes could be a major problem during the investigative stage cases as the identity and motivation of the perpetrators is often not known until the investigation is virtually completed.

I will certainly give careful consideration to S. 275, but it is my understanding that Department of Justice review of predecessor proposals raised many serious questions.

Question from Senator Denton

TERRORISM THREAT

The Subcommittee on Security and Terrorism has held many hearings which relate to the global aspects of terrorism. I had hoped that they would put into context for the American people the emphasis that the Soviet Union has placed in the training, logistical support, arms and money that it supplies to terrorist organizations around the world directly and through surrogates. Moreover, within the U.S. there are organizations that often propagandize for international terrorists.

Mr. Meese, I would like to have your views on how you perceive that threat and the role that you see for the Department of Justice in dealing with the domestic propagandistic support apparatus for terrorist activities.

Response: Senator Denton, please rest assured that I share your deep concern about the growing international threat posed by terrorism and the extent to which some foreign governments provide training and support to terrorist groups. I recognize there are certain sensitivities we must consider in fashioning a response to those who support terrorist groups where that support is expressed essentially through advocacy.

Question from Senator Denton

ANTI-NUCLEAR TERRORISM BILL

Mr. Meese, as you may know, I recently sponsored three bills relating to terrorism. The first (S. 274) concerns Anti-Nuclear Terrorism. Basically, the bill requires that fingerprints be taken from those who would have unescorted access to nuclear facilities. The fingerprints would be turned over to the FBI who would then research their criminal history files. The result of this search would help to assure that only reliable and trustworthy individuals have access to critically sensitive areas. I would like to know if:

1. You believe that a terrorist threat to our nuclear facilities does, in fact, exist; and

2. If fingerprinting and an FBI check, for those who would have unescorted access to these facilities, is an appropriate measure.

Response: It is my understanding that the Department of Justice shares your view that improvements are needed with respect to background checks of persons who have unescorted access to nuclear power plants. I also understand that the Department worked closely with the Nuclear Regulatory Commission to develop draft legislation that would meet security needs while protecting the privacy rights of citizens and meshing with the identification procedures and capabilities of the FBI. Apparently, certain changes were made in this draft bill before it was introduced as S. 274 which have raised some concerns within the Department of Justice but I have every confidence that an appropriate compromise can be developed so that the Administration can endorse an amended version of S. 274.

Question from Senator Denton

DRUG PROBLEM IN U.S.

Many of my colleagues -- and I -- feel that use of illegal drugs is the number one crime problem in the United States today. Do you think the Justice Department is pursuing drug enforcement with sufficient vigor; and what additional weapons would you propose to attack this insidious problem?

Response: The actions that this Administration has undertaken to deal with illegal drugs are unprecedented: creation of the South

Florida Task Force; bringing the resources of the FBI into the fight against drugs; creation of the Organized Crime Drug Enforcement Task Forces throughout the nation; increases of more than 1,000 in the total number of FBI and DEA agents and federal prosecutors; coordination of law enforcement efforts through the Cabinet Council on Legal Policy, the Governor's Project and our 93 State-Local Law Enforcement Coordinating Committees in every federal judicial district; creation of the President's Commission on Organized Crime; initiation of numerous new mutual assistance, extradition and other treaties with foreign governments; and development and enactment of the most significant and far-reaching set of criminal justice legislative reforms ever approved. These initiatives are, I believe, truly historic. At the same time, I am keenly aware of the continuing threat that narcotics trafficking poses to our nation. By virtue of the National Narcotics Act, I chair the Drug Enforcement Policy Board, which will thoroughly reexamine all federal drug enforcement programs, policies and strategies to identify areas where improvements can be made. Among other things, I expect that we will be seeking further anti-crime legislation.

Question from Senator Denton

PRESIDENT REAGAN'S INITIATIVE ON TERRORISM INTRODUCED DURING THE 98th CONGRESS

Mr. Meese, as you know three of the President's four terrorism bills became law during the 98th Congress, that is, legislation fully implementing the International Convention Against the Taking of Hostages, legislation implementing the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (also known as the Montreal Convention) and legislation authorizing payment of a reward to an individual who furnished information regarding an act of terrorism.

I am heartened by the fact that the Congress is becoming more conscious of the threat of terrorism, but I believe that we must do more to combat the growth of domestic and international terrorism.

In addition to the three initiatives which I had introduced, what can be done legislatively to combat terrorism?

Response: The President and the Departments of Justice and State were extremely pleased by enactment of three of the four anti-terrorism measures which the President submitted to the Congress last year. We recognize and are particularly grateful for the support of your Subcommittee on Security and Terrorism in securing action on these measures.

The Departments of Justice and State have for some months been engaged in a review to determine what further anti-terrorism legislative proposals which should be submitted to the Congress. I intend to take an active role in determining what additional legislative measures are necessary and ensuring that such proposals are submitted at the earliest possible time.

Question from Senator Denton

STEPS TO FIGHT ILLEGAL DRUG BUSINESS

Congress had recently approved the President's Comprehensive Crime Control Act, the RICO (Racketeer Influenced and Corrupt

Organizations) statute, and the CCE (Continuing Criminal Enterprise) statute. Each of these, according to the Attorney General, has been helpful in fighting the illegal drug business. What additional legislation would you recommend in our fight against drugs?

Response: The Department of Justice is currently developing a technical corrections legislative package related to the Comprehensive Crime Control Act which was passed in the closing hours of the 98th Congress. One of the provisions of this new package will authorize the Attorney General to designate state and local law enforcement officers as federal drug agents in appropriate cases. This provision was adopted by the House and Senate as part of the Comprehensive Crime Control Act but, because of a clerical error, was not included in the Enrolled Bill transmitted to the President for signature.

In addition to this technical bill which we hope can be quickly enacted as a non-controversial measure, a substantive anti-crime legislative package is under consideration which may contain additional proposals in this area.

Finally, the effective implementation of the many anti-drug tools provided for in the Comprehensive Crime Control Act of 1984 will be a very high priority for me. As the Congress has given us, in P.L. 98-473, a truly landmark criminal justice reform measure, I will do everything possible to see that we derive the full benefits of the 1984 law.

Question from Senator Denton

AMEND FREEDOM OF INFORMATION ACT

QUESTION: The last bill that I introduced (S. 276) would amend the Freedom of Information Act by providing an exemption for records related to terrorism and foreign counterintelligence. Assuming that you are somewhat aware of the strong feelings surrounding the "openness in government" issue, do you believe that the FOIA should be amended to exempt records relating to terrorism and foreign counterintelligence?

ANSWER: As you know, the Administration has been seeking legislative amendments to the FOIA since 1981. The Administration's bill, S. 1751, contained a number of changes in the Act relating to law enforcement and national security, including a provision to exempt sensitive investigations relating to organized crime, terrorism and foreign counterintelligence. Many of those proposals ultimately were included in a compromise bill, S. 774, that the Senate unanimously approved in February 1984. As a result of that compromise, however, S. 774 provided special protection only for organized crime investigations.

Compromise of that nature is, of course, inherent in our legislative process, particularly when dealing with such an important issue as the FOIA. At least with respect to foreign counterintelligence information, the existing exemption for national security may provide some protection. I would hope, however, that Congress will deal at some point with the larger questions such as the possibility that terrorist groups may be able to use the provisions of the FOIA to obtain information from law enforcement agencies allowing them to evade detection and apprehension. I look forward to working with you and the Committee on this important matter.

QUESTION: How do you feel about amending the Act to delete the current provision requiring the release of "segregable" portions of a record? (Such seemingly harmless portions can be pieced together with bits of information from other sources and results in a product which could be of value to hostile intelligence services.)

ANSWER: Since its amendment in 1974, the FOIA requires agencies to disclose all "reasonably segregable" portions of records that are not exempt from disclosure, and puts the burden of proof on the agency to justify withholding. Many agencies, particularly in the intelligence and law enforcement areas, are understandably concerned that the resulting line-by-line review and court scrutiny may well result in the inadvertent disclosure of information that appears harmless but that, in the hands of persons with knowledge of the underlying facts, can be pieced together with other bits of information to identify confidential informants or disclose other valuable information.

Fortunately, many courts have recognized the dangers to national security and law enforcement interests in applying the "reasonably segregable" provision of the Act, but that has not always been the case. I am pleased that the bill approved by the Senate last year, S. 774, included a provision encouraging greater consideration of these dangers with respect to national security and law enforcement. Passage of that provision should give the agencies the opportunity to evaluate whether or not additional protection would be necessary.

Question from Senator Denton

LEGAL SERVICES

Question #1

Mr. Meese, last year I joined several other members of the Labor and Human Resources Committee in an investigation of the Legal Services Corporation. That investigation, and a subsequent inquiry by the General Accounting Office, uncovered widespread and deliberate violations of the anti-lobbying restrictions Congress had placed on the Corporation and its grantees. In fact, the GAO testified on April 11, 1984, that the Corporation's top priority in 1980 and 1981 was political activity designed to preserve funding for the LSC and to avoid the imposition of Congressional restrictions on the Corporation's activities. It was apparent from these investigations that the illegal activity had reached such a high level that it resulted in a reduction in the number of cases handled by some program attorneys. Despite these findings, there apparently is little the Congress or the Federal Government can do to recover these misspent funds or punish those responsible, and little anyone can do to ensure that such activities do not recur. What can be done to improve the accountability of the LSC and its grantees to the Congress and the American taxpayers?

Response: As you know, this Administration has been concerned for some time about the role of the Legal Services Corporation and has proposed that its funding be terminated in favor of establishing a more effective and efficient means of providing legal services to the poor. To date, Congress has not agreed with that position. However, examination of the activities of the Legal Services Corporation and its grantees through congressional hearings has confirmed the need for reform. Such hearings and the legislative reforms which result are important to ensure appropriate accountability; also are important in this regard are the ongoing management improvements within the Corporation itself.

Question #2

Mr. Meese, what will you do as Attorney General to spur the private bar's interest in providing pro bono legal assistance to indigent clients?

Response: Senator, I have for a number of years spoken out on the need for the private bar to assume a greater burden for providing legal services for the poor, I intend to continue to advocate that the legal profession become much more active in this area. I think that the Office of the Attorney General, our Government's chief legal officer, can be used to lead the profession in this direction. I know that various bar associations have already taken considerable steps to increase their pro bono activity.

Question From Senator Denton

CUBAN AND NICARAGUAN INVOLVEMENT IN DRUG TRADE

The Judiciary Committee's Subcommittee on Security and terrorism and the Senate Drug Enforcement Caucus have held joint hearings concerning the involvement of Cuba and Nicaragua in drug trafficking in the United States. We have developed evidence which implicates those countries in both providing financial support and safe havens for ships bound for the United States laden with drugs. What course of action do you believe the United States should take in light of these findings?

Response. It is my view that the Department of Justice should continue to focus increased attention upon the international aspects of narcotics trafficking. Although international cooperation is a useful tool in interdicting such trafficking, where such cooperation is unavailable, either because of foreign government complicity or because of a general attitude of uncooperativeness, it will be my intention to continue to use every means available to halt the illegal importation of narcotics. In those instances in which investigations document evidence of criminal drug trafficking by officials of these countries, we should continue to seek their indictment and prosecution. I am advised that high ranking officials of both of these countries have in fact been indicted. In addition to investigative and prosecutive action, our concern with this unacceptable behavior should also be emphasized through normal diplomatic channels, and disclosure of the involvement of foreign officials in this conduct should be exposed publicly and internationally.

Question From Senator Denton

LEVI/SMITH GUIDELINES

In part as a result of a long series of hearings held by the Subcommittee on Security and Terrorism on the Domestic Security

Guidelines, the so-called "Levi-Guidelines", Attorney General Smith made changes to them. In my view, the changes improved existing guidelines but we have not resolved the questions of gathering intelligence on domestic organizations that may present a threat but that are not currently engaged in violent criminal activity.

Recently the ACLU has pushed to change the Smith Guidelines by prohibiting the FBI from investigating any one or any group based solely on advocacy of violence by such person or group.

Since Judge Webster has said that the FBI does not do this in practice, and since the guidelines are not law, but merely guidelines, do you believe it is necessary to change them?

Response. It is my understanding that the current Guidelines do not require a showing that the enterprise is engaged in violent criminal activity. It is also my understanding that the Guidelines do not foreclose the possibility of a full investigation based on advocacy alone, particularly where the statement suggests a serious and immediate prospect of harm. Moreover, I understand that the Director has so advised the FBI Field Offices.

Accordingly, I see no present need to amend the Guidelines in this regard.

Question from Senator Denton

WELFARE REFORM

Mr. Meese, as you well know, on another subcommittee I am involved with welfare programs. Beyond that committee involvement I have a deep commitment to try to bring together a bi-partisan congressional effort to look comprehensively at the need for welfare reform which combines compassion with efficiency. I would welcome your participation, and that of the Department of Justice in the months ahead, as I endeavor to establish an informal non-public governmental effort to begin to identify those issues which we need to address.

You have been treated critically by much of the media for your free-wheeling discussions about how some of the people sleeping on the heating grates or standing in soup lines are not needy. Some people, therefore, allege that you have no compassion or concern for the poor. Would you describe your involvement with the successful, bi-partisan welfare reform proposals enacted in California during President Reagan's term as governor and how your experience prepared you to play an appropriate role as attorney general in the effort to reform our federal welfare system?

Response: Senator Denton, in 1971, I was privileged to participate in a bi-partisan effort in California to reform the welfare program in that state. It was my responsibility to negotiate a welfare reform package that reduced the total cost of welfare programs to the taxpayers without harming those who were truly in need. Indeed, we were able to increase the grants for those in need by about forty-two percent. I might add that then Governor Reagan personally participated in these negotiations over an extended period of time. President Reagan has maintained the safety net for the truly needy, and I fully share his commitment.

Congress of the United States
JOINT ECONOMIC COMMITTEE
(CREATED PURSUANT TO SEC. 5(a) OF PUBLIC LAW 304, 79TH CONGRESS)
Washington, D.C. 20510

January 31, 1985

The Honorable Joseph Biden
U.S. Senate
Washington, D.C. 20510

Dear Joe:

I would be very grateful if you would send to Edwin Meese, III, a series of questions I have prepared inquiring into his relationship with General Dynamics and other defense contractors, and request that the answers be submitted as soon as possible for the record of your Committee's confirmation hearings. I am hopeful that Mr. Meese's response will be available before the Senate is called upon to vote on his nomination.

By the way, I read the remarks you made in yesterday's hearings, as reported in the Washington Post, and was impressed with the way you got to the heart of the matter.

Sincerely,

William Proxmire
Vice Chairman
Subcommittee on International Trade,
Finance, and Security Economics

WP:rkt

Attachment

QUESTIONS FOR MR. MEESE

FROM SENATOR WILLIAM PROXMIRE

1. According to your January 28, 1985, letter, your first meeting with General Dynamics occurred on August 7, 1981, and it was with David Lewis, Chairman of the Board, and Edward LeFevre, the company's chief lobbyist in Washington. Describe how this meeting was arranged, who called your office to set it up, and when the call, if there was such a call, was made.

2. Why did you agree to meet with Mr. Lewis?

3. Did you know in advance that he wanted to talk about the company's problems with the Defense Department over construction of the Trident?

4. Did you know that the company was experiencing very large cost overruns on the Trident and that it was facing large losses on this contract?

5. Were you aware that the company was taking steps to avoid having to report those losses to the SEC or disclose them to the public?

6. Were the company's finances or its cost overruns discussed in the August 7, 1981, meeting?

7. Were you aware at the meeting that Mr. Lewis and Mr. LeFevre were anxious to get Admiral H. G. Rickover fired or forced to retire?

8. Did the subject of Admiral Rickover come up at this or any other meeting or conversation with General Dynamics?

9. Were you aware at the time of the meeting that the Justice Department was investigating General Dynamics for allegedly filing false claims against the Navy?

10. Did the Justice Department's investigation come up at the meeting?

11. Were you asked to intervene on any of these matters at the August 7 meeting?

12. Whose idea was it for you to call Secretary Weinberger about the Trident program?

13. Why did you agree to arrange a meeting with Secretary Weinberger and General Dynamics concerning the Trident program?

14. Did you call Secretary Weinberger to set up a meeting with General Dynamics? When?

15. Did such a meeting take place? If so, when and who took part?

16. Were you aware that a call by you to the Pentagon could be interpreted as applying White House pressure in favor of General Dynamics, and did you intend to apply pressure?

17. Were you or your staff ever asked by General Dynamics officials to intervene with the Navy on Trident or any other Navy contract?

18. Were you or your staff asked to intervene with the Justice Department prior to the closing down of the General Dynamics investigation in December 1981?

19. Have you or your staff ever discussed the Justice Department's investigation of General Dynamics with Lowell Jensen or any other Justice official?

20. Can you explain why General Dynamics came to you to discuss its defense contracts problems rather than discussing them with the Defense Department?

21. Did you invite General Dynamics to inform you if it had problems with its defense contracts?

22. Did you discuss defense contract problems with firms other than General Dynamics, and, if so, will you provide a listing of any meetings or telephone conversations since January 1981 between yourself or members of your staff and officials or representatives of such firms?

23. Are you aware that, in September and October of 1984, James Baker and Fred Fielding intervened in efforts by Senator Grassley and Senator Proxmire to obtain the records of the Justice Department investigation of General Dynamics?

24. Are you aware that, in September and October 1984, Mr. Baker and Mr. Fielding intervened in the Grassley subcommittee requests for the Justice Department records?

25. Have you talked to Mr. Baker or Mr. Fielding about the General Dynamics case?

26. Did you know about Mr. Baker's and Mr. Fielding's intervention in the congressional dispute over access to the Justice Department's records of the General Dynamics investigation at the time they were intervening?

27. Did you recommend or make your views known to Mr. Baker or Mr. Fielding that the Justice Department records not be turned over to the Grassley subcommittee?

28. In view of the contacts you and your staff have had with General Dynamics since 1981, do you think it would be proper for you to take any part in the present investigation of General Dynamics, if you are confirmed, or do you intend to recuse yourself from the case?

29. Last August, Attorney General Smith took part in a ship-launching ceremony at the invitation of General Dynamics, after he recused himself from the General Dynamics case because of a possible conflict of interest. Do you think it was proper for the Attorney General to take part in such a ceremony of a company under investigation by the Justice Department, and would you take part in such a ceremony for a firm under investigation by the Justice Department if you are confirmed as Attorney General?

THE WHITE HOUSE
WASHINGTON

18 February 1985

The Honorable William Proxmire
United States Senate
Washington, D.C. 20510

Dear Senator Proxmire:

Before giving a detailed response to your second set of questions, which were provided to me after the close of my confirmation hearings, a brief overall statement is in order.

The involvement of my office in the U.S. Navy - General Dynamics relationship in 1981 was altogether routine and minimal. My practice, like that of other White House staff officials (in this and previous administrations), is to meet with individuals who believe they have significant information, grievances, or views to offer representatives of the President.

In line with this practice, on 7 August 1981 I met with Mr. David Lewis of General Dynamics, who discussed his company's then-pending dispute with the Department of the Navy relating to the manufacture of the Trident submarine. I determined, again as a completely routine matter, that the White House would not become involved in the controversy and that the matter should be left to the primary parties -- the Department of Defense and General Dynamics -- to resolve, hopefully in a constructive fashion. I do not recall and have no records of any meetings or conversations on this subject with Defense Secretary Weinberger or Navy Secretary Lehman. Neither then nor thereafter did I lend any support whatsoever to General Dynamics' position in the dispute -- neither in communications with the Defense Department, the Navy, the President, any of my colleagues in the White House, or anyone else in the Administration. Nor did I at any time become involved in any way with any Department of Justice matters concerning General Dynamics.

My responses to your specific questions are as follows:

Questions 1 - 5:

The 7 August 1981 meeting was requested by representatives of General Dynamics. I do not know, nor do office records show, who called my office or when such a call was made. I agreed to meet with Mr. Lewis for the reasons stated above, in accordance with White House practice. I do not recall whether I knew in advance that Mr. Lewis wanted to talk specifically about problems relating to the construction of the Trident, but I do recall that Mr. Lewis wanted to discuss problems between the Department of Defense and General Dynamics. I did not know whether General Dynamics was experiencing cost overruns or facing large contract losses, and was unaware of any actions that the company might have been taking with respect to its financial reporting to the SEC or to the public.

Questions 6 - 11:

To the best of my recollection, there were discussions at the 7 August 1981 meeting about problems between General Dynamics and the Navy on construction of the Trident submarine. I do not recall any discussion of cost overruns and am certain there was no discussion about Admiral Rickover or any Justice Department investigation. I was not aware whether Mr. Lewis and Mr. LeFevre desired Admiral Rickover's firing or forced retirement, or whether the Justice Department was "investigating General Dynamics for allegedly filing false claims against the Navy." I certainly was not "asked to intervene on any of these matters."

Questions 12 - 16:

General Dynamics requested that I telephone Secretary Weinberger because the company had been unable to secure a meeting with him. To the best of my recollection, which is confirmed by the records of both my office and Secretary Weinberger's office, I did not telephone the Secretary to arrange a meeting. I did not agree to arrange such a meeting, but simply stated that I would look into the possibility. I do not know whether any such meeting ever took place. Furthermore, I did not believe, nor did I intend, that any actions that might be taken by my office, acting in accordance with long-standing White House practices, "would be interpreted as applying pressure." As Secretary Lehman has advised your office, in fact no pressure was exerted.

Questions 17 - 19:

Neither my staff nor I was ever requested by General Dynamics officials to intervene with the Navy with respect to Trident or any other Navy contract. Nor were we "asked to intervene with the Justice Department prior to the closing down of the General Dynamics investigation in December 1981." The only discussion I have had with any Justice officials concerning General Dynamics was during routine briefings in connection with the current confirmation proceedings.

Questions 20 - 22:

I did not invite General Dynamics to raise any problems with me, and assume that the company did so because it desired an opportunity to be heard. During the past four years my staff and I, along with most members of the White House Office, have met with numerous persons ranging from individual businessmen to representatives of firms, large and small. Our records do not provide a listing as to which, if any, of them might have contracts with the Department of Defense or its subordinate entities. Therefore, I have no way of answering Question 22 unless you refer to a specific company or transaction and in some specific time context.

Questions 23 - 27:

I do not recall, prior to receiving your questions, being aware of any of the matters raised in questions 23, 24 and 26. I do not now know whether such actions took place. Mr. Fielding indicates that he purposefully would have avoided bringing such matters to me because of my status as Attorney General-designate.

I do not recall talking to Mr. Baker or Mr. Fielding about the General Dynamics case. I recall no recommendation or expression of views to Mr. Baker or Mr. Fielding that the Justice Department records not be turned over to the Grassley subcommittee.

Question 28:

As I stated in the hearings on my confirmation, I would be guided by the legal opinions from the Office of Legal Counsel with respect to the propriety of recusing myself from specific matters before the Justice Department. I therefore have an open mind on the question you raise. I should add, however, that since my contacts with General Dynamics officials have been so minimal and since they did not relate to the Justice Department's investigation, I do not presently see a basis for recusal.

Question 29:

I do not think it would be appropriate for me to express an opinion, directly or indirectly, on the actions of the current Attorney General. The question about my own participation is totally hypothetical. But, as a general rule, I do not intend to take part in ceremonies or other events sponsored by firms that are under investigation by the Department of Justice.

Sincerely,

Edwin Meese III

Edwin Meese III
Counsellor to the President

THE WHITE HOUSE
WASHINGTON

18 February 1985

The Honorable Alan Cranston
United States Senate
Washington, D.C. 20510

Dear Senator Cranston:

I am pleased to provide my response to your questions regarding Department of Justice assistance in the matter of the Henry Liu case. Please find my answers attached to this letter.

Sincerely,

Edwin Meese III

Edwin Meese III
Counsellor to the President

Questions from Senator Cranston

Mr. Meese, you may be familiar with the case of Henry Liu, a distinguished Chinese-American scholar and journalist who was murdered at his Daly City, California home this past November. There is widespread speculation that Mr. Liu was killed for publishing a book and certain articles that the authorities in Taiwan did not want published. Published reports allege that the murder was carried out by four members of a Taiwanese-based gang. The authorities in Taiwan, after initially denying any involvement, have now admitted that the intelligence apparatus of the authorities in Taiwan was implicated in the killing.

Will you commit the full resources of the Justice Department to bring to justice the killers of Henry Liu?

What policy will you adopt to reassure American-based journalists that they can exercise their freedom of the press without facing assassinations by agents of foreign powers?

How do you propose to handle bringing those implicated in Mr. Liu's murder to trial, assuming some are residing in Taiwan, as apparently is the case, in the absence of either an extradition treaty or diplomatic relations with the authorities in Taiwan?

ANSWER:

If confirmed by the Senate as Attorney General, I would commit the full resources of the Justice Department to provide all necessary assistance to local law enforcement officials (who have primary jurisdiction) to bring to justice the killers of Henry Liu.

It is my understanding that the Department of Justice is currently monitoring closely the progress of the San Mateo County District Attorney's investigation into the murder of Henry Liu, and providing all appropriate assistance. I am also advised that recently, at the District Attorney's request, U.S. Attorney Joseph P. Russoniello authorized the Federal Bureau of Investigation to file an Unauthorized Flight to Avoid Prosecution complaint (18 U.S.C. Sec. 1073) against suspect Chen Chih-li. I am further advised that Assistant Attorney General Stephen Trott of the Criminal Division specifically requested that Mr. Russoniello meet with local prosecutors to discuss the investigation and that the Director of the FBI sent two of his agents to accompany local police officers to Taiwan for interviews of the suspects incarcerated in that country.

Reportedly, the homicide investigation by local authorities is proceeding satisfactorily. As you know, murder is an offense within the primary jurisdiction of the local authorities; however, in addition to assistance mentioned above, it is my understanding that the Department of Justice is examining closely the possibility of violations of Federal law and it will be my purpose, if confirmed as Attorney General, to continue that active consideration of the case.

Finally, with regard to extradition matters, I am advised that the Department of Justice is working closely with the Department of State in an effort to obtain the return to the United States of the suspects in this matter. I believe that prompt and effective police action, vigorous prosecution of this matter and forceful diplomatic action in this and any similar cases are essential to help deter future attacks of this kind. Such vigorous deterrence is the best policy to protect journalists in exercising their freedom of the press.

STROM THURMOND, S.C., CHAIRMAN

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MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

February 21, 1985

Duke Short, Esq.
Senate Committee on the Judiciary
SD-224

Dear Mr. Short:

I would appreciate it if the enclosed replies to my questions by Edwin Meese III be placed into the record.

Thank you.

Sincerely,

Patrick Leahy

PATRICK LEAHY
United States Senator

PJL:jcs

Enclosure

THE WHITE HOUSE
WASHINGTON

5 February 1985

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

I am pleased to respond to the written questions you posed to me after the conclusion of my confirmation hearings last week.

Questions 1 and 2:

Q: "On January 31, 1983 the Department of Transportation published for comment a proposed rule allowing owners of certain United States flag tanker vessels to repay certain subsidies they once obtained and enter the domestic trade, which they are now forbidden to do. Have you at any time participated in any aspect of the White House review process concerning these regulations? Have you spoken to anyone informally at the White House or OMB about these regulations?"

A: In my position as Counsellor to the President, I preside over a management committee that monitors domestic policy issues. In that capacity, I monitored the Department of Transportation's CDS repayment proposal.

I was not a part of any substantive White House or OMB review. Rather, as a procedural matter I made it clear, that White House input, if any, should be channelled through the Cabinet Council on Commerce and Trade.

Question 3:

Q. "When and under what circumstances did you first hear about the proposed regulations?"

A. Our records show that I first heard about the proposed rule at a meeting of approximately 30 minutes duration held in my office on 16 March 1983, convened at the request of various maritime industry and union representatives to discuss maritime policy and Alaskan oil export policy. At this meeting, the CDS repayment proposal was raised by one of the industry representatives. I was alerted by a staff member that this was a proposed rule, that the White House should take no position, and that notice that this mention had occured should be forwarded to DOT for inclusion in the official record. At the conclusion of this meeting, I asked a member of the White House Office of Policy Development staff, who attended the 16 March meeting, to review the matter and report back to me. On 24 March 1983 I was advised that until the comment period was over it was unnecessary and inadvisable for the White House to get involved. I agreed with this conclusion and asked that a copy of the White House memoranda dealing with the CDS repayment mention at the meeting be forwarded to DOT for inclusion in the record. This was done.

Question 4:

Q: "Have you ever discussed this matter with Mr. Robert Gray?"

A: My best recollection is that I have not discussed this matter with Mr. Robert Gray except at the above-mentioned meeting on 16 March 1983 in my office, which Mr. Gray attended along with several other maritime industry and union representatives.

Question 5:

Q: "Did Mr. Gray, or anyone speaking for or representing Mr. Gray, ever ask you to speak to anyone else or take any action, however slight, with respect to this proposal?"

A: No, not to the best of my knowledge.

Sincerely,

Edwin Meese, III

EDWIN MEESE III
Counsellor to the President

Office of the Attorney General
Washington, D.C. 20530

26 March 1985

The Honorable Howard M. Metzenbaum
U.S. Senate
Washington, D.C. 20510

Dear Senator Metzenbaum:

This will reply to your letter of 15 February 1985. It has been necessary to delay my response until now so that I had sufficient time to reconstruct events that happened over two years ago. Your question and my response follow.

The Question of Senator Metzenbaum:

> "During Judiciary Committee consideration of your nomination a letter was introduced (copy enclosed) from John R. McKean to you dated November 4, 1982. Item 5 in that letter refers to a 'Client issue previously discussed (NLRB).'
> I would appreciate knowing the details of the November 8th discussion of item 5, the previous related discussion, and whatever steps you or other members of the administration may have taken in this matter."

Response:

To the best of my recollection, during a meeting with me on 8 November 1982, Mr. McKean stated that one of his clients had requested information as to how a person convicted of an NLRB offense could have his hunting license restored. He had mentioned this briefly in a prior conversation (as referred to in his letter of 4 November 1982) the time and details of which I do not recall. I replied that I thought the proper procedure would be for the person in question to apply for a pardon, but that I would give further thought to the matter. Mr. McKean brought this up again in a later conversation, and I indicated that I thought a pardon application would be the best step that could be taken.

Neither I nor any member of my staff took any action on this matter on behalf of Mr. McKean, his client, the person about whom his client was inquiring or any other person.

Sincerely,

EDWIN MEESE III
Attorney General

The **Chairman**. Now, the first witnesses tomorrow will be the Office of Government Ethics witnesses, Mr. David H. Martin, Director, F. Gary Davis, staff attorney, and Nancy Feathers, staff attorney.

And the committee will meet at 10:30 tomorrow morning, and we now stand adjourned till then.

[Whereupon, at 5:48 p.m., the committee was adjourned, to reconvene at 10:30 a.m., Thursday, January 31, 1985.]

CONFIRMATION OF EDWIN MEESE III

THURSDAY, JANUARY 31, 1985

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to recess, at 10:30 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Mathias, Kennedy, Hatch, Laxalt, Metzenbaum, Specter, Grassley, Leahy, Heflin, Denton, DeConcini, and McConnell.

Staff present: Duke Short, chief investigator; Joseph Kopka and Frank S. Klonoski, investigators; and Ruth E. Lucas, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The **Chairman**. The committee will come to order.

Our first panel today is from the Office of Government Ethics, Mr. David H. Martin, Director. Is Mr. Martin here?

Mr. **Martin**. Yes, I am.

The **Chairman**. Mr. Martin, if you will come around and have a seat. F. Gary Davis, staff attorney, is he here? If you will come around and have a seat, Mr. Davis. Nancy Feathers, staff attorney, is she here? If you will come around and have a seat too.

If you will stand up and raise your right hand to be sworn.

Will the testimony that you give in this hearing be the truth, the whole truth, and nothing but the truth, so help you God?

[Chorus of ayes.]

The **Chairman**. Have seats. We are waiting on Senator Biden and Senator Metzenbaum so we will take a recess for a minute or two until they get here.

[Whereupon, a brief recess was taken.]

The **Chairman**. The committee will come to order.

Now we have just sworn the witnesses here from the Office of Government Ethics: Mr. Martin, Mr. David, and Miss Feathers.

STATEMENT OF DAVID H. MARTIN, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY F. GARY DAVIS, STAFF ATTORNEY, AND NANCY FEATHERS, STAFF ATTORNEY

The **Chairman**. Mr. Martin, I wish you would, in the beginning, answer four things, first. If you would give your educational background, your experience in your professional life, the length of time you have been in the Office of Government Ethics, and your

48-060 O—85——12

role at the Office of Government Ethics. If you will answer those four things.

Mr. **MARTIN**. Yes, I would.

The **CHAIRMAN**. Did you catch it all now? Your education, your experience, and the length of time you have been at the Office of Government Ethics, and then your role at the Office of Government Ethics, and then I will request the other two witnesses to do the same thing.

Mr. **MARTIN**. My education experience is I am a graduate of Western Maryland College, which is located in Westminster, MD. I spent 2 years in the Army. Then I went to school at George Washington University Law School, graduated there in 1967. I spent a brief term working for a Congressman from Maryland named Congressman Machen as a legislative assistant for 6 months

I then obtained a job at the Department of Justice as a trial attorney in the organized crime section. I spent 4 years there on the strike force program.

After that, I was hired as a Chief Counsel at the U.S. Secret Service. I spent 3 years there. After 3 years later, I started a law firm here in town, and practiced law for 4 years, or so, and then in the summer of 1983, I was confirmed and appointed to this position, which I have held since. And I am the Director of the office.

The **CHAIRMAN**. You are Director of the office?

Mr. **MARTIN**. Yes, I am.

The **CHAIRMAN**. Now, Mr. Davis, will you tell us your background, and so forth, similar to what he just did?

Mr. **DAVIS**. Yes, sir, Senator, I will be happy to. I am a graduate of the University of West Virginia Law School.

The **CHAIRMAN**. Where?

Mr. **DAVIS**. University of West Virginia.

The **CHAIRMAN**. All right. Speak into the microphone. Pull it closer to you so we can all hear you.

Mr. **DAVIS**. University of West Virginia Law School, Senator. I immediately went into the U.S. Army. I served 5 years as an officer in the Judge Advocate General Corps. Upon leaving the service, for a brief period of time, less than 1 year, I served as a staff attorney at the Postal Department. I have 6 years of private practice in a private law firm in McLean, VA. I resumed Federal Government in the Department of Defense where I served in the Office of the Comptroller, and since the creation of the Office of Government Ethics, at the time of the setting up the office, and establishing our current location since 1979, I have been a staff attorney in the Office of Government Ethics. I am currently a staff attorney in that office.

I have served in the capacity of acting chief counsel on occasion, and I guess I am considered one of the senior staff attorneys.

The **CHAIRMAN**. Miss Feathers, we will be glad to hear from you now.

Miss **FEATHERS**. OK. I am a graduate——

The **CHAIRMAN**. Speak into your microphone. Pull it up close to you.

Miss **FEATHERS**. OK. I graduated from Wittenberg University in Springfield, OH, in 1981, and then I graduated this past May from Cornell University Law School in Ithaca, NY., and I spent the summers during my law school years clerking in different law firms. And I spent a semester working with the legal aid clinic at the law school in Ithaca, and then in October 1984, I came to the Office of Government Ethics, and my position there is as staff attorney.

The **Chairman**. Thank you. Now, Mr. Martin, do you have a statement? You understand what this hearing is all about?

Mr. **Martin**. Yes, I do, Senator. I have a brief——

The **Chairman**. You have been requested to come and testify here. And do you have a statement you would like to present to the committee?

Mr. **Martin**. I have a brief statement, some notes that I put together, that I would, Senator.

The **Chairman**. All right. You may proceed.

Mr. **Martin**. Thank you. I would like to take this opportunity to explain to you what we do in the Office of Government Ethics when confronted with what we call an appearance problem. As you know, there is a rule in the executive branch regarding appearances, whose coverage is very broad. It provides that an employee should avoid any actions which might result in, or create the appearance of a number of things, and let us call them an impropriety for now. Might result in or create the appearance. This rule is aspirational in nature. That is, we all try to avoid that, creating an appearance, but as we know in the public sector, that is often difficult to do. Our attitude is, when there is an appearance problem, that the persons involved have done no wrong, have committed no improprieties, and are presumed to have acted ethically.

It is an appearance only. However, the job of the agency ethics official, and those of my staff, is to determine whether or not there is any substance or reality to the appearance. If there is not, there has been no violation of the standards of conduct, except the broad-based rule which I read to you, which cautions against creating an appearance. We should all, in the public sector, strive to avoid appearances of impropriety.

However, in today's world of media hype and pressure, it is frequently very, very difficult. For instance, gentlemen, I stand before you now with an official and personal appearance problem.

I did work for President Reagan, and had a minor function in the campaign in Montgomery County, MD., in the primary and the general election. I was appointed by President Reagan.

There are now allegations in the media that I attempted to suppress information—the working paper which is now public—and that I overruled two career attorneys in their determinations regarding a review that I directed be undertaken, which I did not have to do. I assure you that I acted with total propriety, with the highest standards of ethical conduct, and without losing my objectivity, and I acted independently. Simply stated, gentlemen, the allegations are without foundation and are simply untrue.

Now, your job will be to look behind this appearance and determine if there is any substance to it. Fortunately for me, I have two attorneys with me who can remove this—who can determine for you whether or not I acted properly, and I am confident you will. And if you do find that, you will be left with this little appearance problem. Not so little because I feel professionally and personally tarnished by it. Gary Davis and Nancy Feathers, in the course of their testimony today, will confirm for you and exonerate me. I am confident of that.

If you do find that that is true and that I did act properly and ethically, did I do anything wrong, I submit to you the answer is no. I tried to do what I, as a public servant, as God gave him the intelligence to do right, that is what I tried to do. Did I violate any standards of ethical conduct? No.

But I am left with this appearance, which I do not think will ever disappear. Now, in the same vein, I instructed my attorneys to do a tip to stern examination of the independent counsel's report. They found no conflicts of interest and, together, after much robust discussion and give and take, we agreed there was one area of concern. The McKean loan arrangement. That created an appearance problem. But, after satisfying myself there was no substance to the appearance, I found Mr. Meese had not acted unethically, that he had not lost his independence or impartiality, and that he had not violated any standards of conduct.

Based upon my evaluation of those facts, aided by my staff's input, which they will tell you today, and after full discussion, I determined that this matter did not constitute an appearance of impropriety, which suggested or required corrective action on the part of the Executive Office of the President.

Instead, pursuant to section 203 of the Executive order under which we operate, I felt that it was sufficient to bring it to the attention of the designated agency ethics official, Fred Fielding, for such action as he deemed necessary in light of the special circumstances surrounding the agency's individual mission. That, gentlemen, is what I did, and I welcome your questions now and any questions you may have of Mr. Davis and Miss Feathers.

The CHAIRMAN. Mr. Martin, you certified to the Judiciary Committee on January 24, 1985, that Mr. Meese was in compliance with applicable laws and regulations governing conflicts of interest. Now, is there any doubt whatsoever in your mind that Mr. Meese may have violated any standards of conduct, and are you totally satisfied that your report to the committee was complete, thorough, and accurate?

Mr. MARTIN. I am totally satisfied that Mr. Meese is in compliance with the conflict-of-interest laws. Except for the explanation which I just gave you regarding appearances, I am confident that he did not violate any substantive standards of conduct.

The CHAIRMAN. Now, Mr. Davis, you are a staff attorney there with Mr. Martin. Do you agree with these findings?

Mr. DAVIS. I certainly do, Senator. I agree, I agree with the findings.

The CHAIRMAN. Do you care to make any other statement in connection with it?

Mr. DAVIS. I do not have a prepared statement but I certainly am available to answer questions because I think there is some confusion surrounding this internal document and what was ultimately done by our office in this case. And at some point, I think that needs to be clarified.

The CHAIRMAN. All right. Now, Miss Feathers, I believe you are a Staff Attorney there in this ethics office. Do you agree with the findings there?

Miss **Feathers**. Yes; I do. I agree with what Mr. Martin said.

The **Chairman**. Do you have any other statement you would like to make?

Miss **Feathers**. As Mr. Davis said, if anything comes up that you have specific questions on, I am certainly willing to clarify any confusion.

The **Chairman**. In other words, you are available, both of you, all three of you, to answer any questions any member of the committee has?

Miss **Feathers**. That is correct.

The **Chairman**. Now, Mr. Martin, was the certification letter that you submitted to the Senate Judiciary Committee on January 24, prepared in accordance with your normal operating procedures, and would you elaborate on those procedures?

Mr. **Martin**. Yes; I would, your Honor. To answer your question, it was, and to elaborate on the procedures, when the form 278 and any supporting material comes into the office, I have my chief counsel, who is Donald Campbell, who had a distinguished career in the U.S. attorney's office before joining me, assign it to one or more attorneys for review, all of this material. And—and it is reviewed by that attorney. It is then again reviewed by a second level senior attorney, such as Mr. Davis or another person in my office, reviewed again by Mr. Campbell, and then finally signed off by me. And we followed normal procedure.

The **Chairman**. Mr. Martin, in your letter to me, dated January 28, 1985, you state, and I quote:

> Only one of the allegations rose to the level of a violation of the standards of conduct. That one violation involved what we term an appearance problem, involving the loan arranged by John R. McKean for Mr. Meese, and the subsequent participation by Mr. Meese in the appointment of Mr. McKean to a full-time position on the Board of Governors of the Postal Service.

Now, Mr. Martin, do you mean that there was actually a violation of the standards of conduct, or that the allegation, if in fact found to be true, would constitute a violation?

In other words, am I correct in concluding that, as far as you were concerned, the possibility of a violation existed, and it was incumbent upon you to fully examine that issue? However, after a thorough investigation, you concluded that there was no violation?

Mr. **Martin**. I concluded there was no violation of the standards of conduct. There is a broad-based rule, Senator, about appearances, which I explained to you. If you want to say that when—like me, in my situation which you are going to examine today—that because of the facts that I found myself in, I violated an appearance standard, you might give it that label, but I do not, I do not use those terms, and I do not think my staff attorneys do.

We talk in terms of an appearance problem. We examine the problem. We determine if there is any substance to it. If there is not, in my view, there is not a violation of the standards of conduct, and there are no ethical problems.

I hope that answers your question.

The **Chairman**. Mr. Martin, what prompted your telephone conversation with White House counsel Fred Fielding, and would you elaborate on that conversation?

Mr. MARTIN. Well, let me, let me generally explain to you, the rather loose arrangement that now exists in terms of the ethics program in the Federal Government.

Each agency has a designated agency ethics official. That person is responsible and reports to my office on matters in his agency. We provide the general overall direction regarding whether or not standards of conduct are in place, whether or not there—we audit to see if they are being enforced, and there is training, and what have you.

Whenever a problem arises, and it frequently does, in any agency regarding our program, the first thing I do is bring the agency ethics official in on it. He should be advised, and that is what—that—as soon as I got the report from Mr. Davis and Ms. Feathers, I advised Mr. Fielding, which I would have done regardless of the agency.

Senator MATHIAS. Mr. Chairman, can I just inquire?

The CHAIRMAN. Senator.

Senator MATHIAS. Was this an oral or written communication?

Mr. MARTIN. It was an oral telephone call.

Senator MATHIAS. All of it was oral?

Mr. MARTIN. Well, there was only one telephone at this, at this point.

Senator MATHIAS. So there was no written communication on it?

Mr. MARTIN. No.

The CHAIRMAN. Now, Mr. Martin——

Mr. MARTIN. Might I add, Senator, that, that is, would be normal practice for me to do that.

The CHAIRMAN. Is this a customary procedure followed by your office?

Mr. MARTIN. Yes. It is.

The CHAIRMAN. Mr. Martin, is it customary to become directly involved with the subject of your inquiry, as well as his representatives? And, if so, would you give the committee several examples of this action?

Mr. MARTIN. Well, over the course of the conduct it is, and in fact if the person is apprised that there is a problem, frequently, they will come to us or their attorneys, and, yes, I would be glad. Congresswoman Ferraro's lawyers have been to my office. J. Lynn Helms' lawyers have been to my office. Mr. Baker, James Baker's lawyers have been to my office. Any—and in fact several individuals who did not want to be represented would come in and explain their position to me. So it is—was not an unusual procedure.

The CHAIRMAN. Mr. Martin, would you elaborate on your meetings with Mr. Meese's counsel?

Mr. MARTIN. Well, when I called Fred Fielding, he said, "Would you be willing to be heard by Mr. Meese's private attorneys?" And I said, "Of course", and so I think that same day, or the next morning, they asked to see me, and—and I invited them to my office.

The CHAIRMAN. Mr. Martin, would you tell the committee why you did not advise the committee, in your January 24 certification letter, of the existence of the staff working paper, and again, is this in accordance with your established procedures?

Mr. MARTIN. Well, I did not because I did not think it was proper, and yes, it was in accordance with our established procedure. That was a matter that was an executive branch matter, and I, I did the proper thing by notifying the agency of the problem, and I did not, did not think it was proper to send—and frequently we do not. We resolve a lot of problems with a lot of nominees, and if we do resolve them to our satisfaction, we do not raise them in the certification letter.

The **Chairman**. Mr. Martin, someone referred to that staff report, that staff memorandum as a report. Was that a report or just an interoffice communication with your own staff?

Mr. **Martin**. Well, obviously, it was something that was internally—and I—let me add that I think this, this disclosure of this document—and I understand why it had to be disclosed—has hurt my office terribly, I think, in terms of—I have already had one incident of a lawyer calling me and saying, "I do not know whether I should give you something written," but——

The **Chairman**. In other words, you feel that any communication with your own staff members, batting things back and forth, should rest there——

Mr. **Martin**. Obviously, Senator.

The **Chairman** [continuing]. And not have to be made public.

Mr. **Martin**. Absolutely. I do not know how you can conduct your business in public, and especially the sensitive business of ethics, and ethics-related matters that our office—I, I have really gone out of my way to caution reporters and people who deal with us, and my own staff, and the agency ethics officials. We have to get our facts straight. We have to do our work in a, in a—out of the spotlight, and away from publicity, and I just do not know how an office like mine could conduct its business in public.

The **Chairman**. Is it possible that maybe that sometime you do like some executive heads do, have someone play the devil's advocate? I understand even the President has people that come in and take the opposite side, to argue and discuss matters, to bring out all facets of matters. I would hate to think that I could not talk to my administrative assistant and my staff confidentially and bat things back and forth, if everything had to be made public, and after a decision is reached, then that could be made public. But your private discussions with your own staff, it seems to me, should be confidential.

But, in spite of that, and which you, I guess, could have claimed executive privilege, Senator Biden and I asked you to make that memorandum public, and you agreed to do it, and we want to thank you for doing that.

[The aforementioned document follows:]

United States of America
**Office of
Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

JAN 29

Honorable Strom Thurmond
Honorable Joseph R. Biden, Jr.
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senators Thurmond and Biden:

This is in response to your letter requesting that I release to the public a working paper that was prepared, at my direction, by two staff attorneys. The working paper was an exhaustive review of the report of the Independent Counsel concerning Edwin Meese III. I previously had provided you with a copy, requesting that you keep it confidential. The reason I requested confidentiality is because this Office has always prided itself on open and robust internal communications regarding sensitive matters. Additionally, I believed that to release it would be unfair to the specific attorneys involved in this matter, would impair the Office of Government Ethics institutionally, and would endanger that robust give-and-take so necessary to resolve difficult and sensitive matters. Further, I was reluctant to release the working paper publicly because it did not represent the final decision-making act of this Office, nor does it represent the final conclusion reached by its authors. It was truly part of an on-going deliberative process which properly should not be disclosed.

I am, however, releasing the document publicly today based on your request and your statement that this is necessary for the Judiciary Committee to openly resolve any issues regarding the nomination of Edwin Meese III to be Attorney General of the United States.

As you know, the Office of Government Ethics is charged with the overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of the executive branch. One of the specific duties of the Director is to conduct a review of the financial statements of presidential nominees to determine if these statements reveal possible violations of the conflict of interest laws and regulations, and to recommend appropriate action to correct any conflict of interest .

In order to carry out my responsibilities, I directed that two of my attorneys, Gary Davis and Nancy Feathers, conduct a complete review of the report of the Independent Counsel for purposes of determining whether or not there were any actual conflicts of interest or any other ethics-related problems raised, but not addressed, by the Independent Counsel. I wanted a thorough and exhaustive review, and I cautioned them to raise all matters that might present problems. I put no restrictions or limitations on their review.

My staff reported that there were no conflicts of interest problems contained in the report of the Independent Counsel. They did raise three ethics-related problems. Their report initially concluded that, first, there was an appearance problem based on the fact that Mr. Meese was one of four approving officials for the appointment of John R. McKean to the Board of Governors of the Postal Service, when Mr. McKean had previously arranged two loans for Mr. Meese. Second, they concluded that there might be a problem regarding the forbearance of interest payments on the loans previously arranged by Mr. McKean which may have constituted a gift; and third, they concluded that there was an appearance problem in regard to the proposed appointment of Thomas Barrack to a position in the executive branch, when Mr. Barrack had found purchasers for the Meese residence in California. After a series of meetings and discussions which included my Chief Counsel, Donald Campbell; Gary Davis and Nancy Feathers, I concluded that there was no violation of the standards of conduct regarding the forbearance and gift problem, because we determined that since Mr. McKean was the trustee and had not extended the loan, he did not, even in this unique situation, give Mr. Meese a gift. I also concluded that, based on the facts, there was not an appearance problem created in the proposed appointment of Thomas Barrack to an executive branch position because Mr. Barrack arranged or found purchasers for the Meese residence based on his belief that it was a good deal for the purchasers. Additionally, Mr. Meese was unaware of any financial involvement by Mr. Barrack. The sale of the Meese residence took place in September, 1982 and Mr. Barrack's appointment was not even considered until February, 1983. Based on these facts, it was my judgment that there was not even an appearance problem.

As regards the McKean appointment, my initial impression was that this was a basis for concern that required further probing. After further examination and factual development, it was my judgment that there was no substance to the appearance problem based on the facts as developed, and, in particular, on the following:

- at the time the loans were made, there was no evidence that Mr. McKean was interested in, or even contemplated receiving, a federal position;
- both loans were arms-length transactions at higher than prevailing bank rate interest;
- consideration of Mr. McKean's name was initiated by Mr. Deaver;
- Mr. Deaver initiated the nomination of Mr. McKean for a longer term on the Board, at which time the appointment process was already in motion; and
- the Independent Counsel's report found no evidence that Mr. Meese spoke to anyone or took any action to assist Mr. McKean in obtaining a longer term.

I satisfied myself that the loans in question were arms-length transactions, and that there existed credible explanations for the actions of both Mr. McKean and Mr. Meese independent of their financial relationships. I further satisfied myself that Mr. Meese had not lost his complete independence or impartiality.

On January 24, 1985, I certified to you that Mr. Meese was in compliance with applicable laws and regulations regarding conflicts of interest. That was, and is, accurate. I did not advise you of the staff working paper and of my determinations, since I found that Mr. Meese's objectivity had not been impaired in the McKean matter. Secondly, it is the agency's responsibility to monitor standards of conduct. I merely followed office policy in notifying the Designated Agency Ethics Official, Fred Fielding, of the problems raised in the working paper, and of my subsequent determination.

Sincerely,

David H Martin

David H. Martin
Director

Attachment

United States Government
MEMORANDUM

Office of Government Ethics

Subject: Edwin Meese III - Report of Independent Counsel

JAN 14 1985

From: F. Gary Davis, Staff Attorney Gary Davis
Nancy Feathers, Staff Attorney

Thru: Donald Campbell
Chief Counsel

To: David H. Martin

In the latter part of December, you requested that we undertake a review of the Common Cause press release opposing the nomination of Edwin Meese III, as Attorney General and compare Common Cause's findings with those of Independent Counsel. Pursuant to that request we have reviewed the Report of Independent Counsel Concerning Edwin Meese III, September 20, 1984 and the December 1984 Common Cause - The Case Against Edwin Meese III for Attorney General - a review of the Independent Counsel's Report Prepared by Common Cause. We also reviewed OGE's financial disclosure files pertaining to Edwin Meese, John McKean and Edwin Thomas.

In the foreward to his report the Independent Counsel, Jacob A. Stein, states that the statute authorizing the appointment of an Independent Counsel confines the scope of his inquiry to the question of whether a federal criminal law has been violated by the respondent. (28 U.S.C. § 591(c)). Mr. Stein states that nowhere in the statute or the appointing order is there a directive to investigate and report on the propriety or the ethics of the respondent's conduct. Common Cause in its review of the Independent's Counsel's report addresses Mr. Meese's "fitness" for public office. In our review we have rejected both of these standards for evaluating the findings and have instead attempted to apply the provisions of Executive Order 11222 and the implementing standards of conduct regulations found in 5 C.F.R. Part 735 and 3 C.F.R. Part 100 in evaluating Mr. Meese's activities in his current position as Counsellor to the President.

First, we have concluded that any action on your part in response to either the Common Cause Report or the findings of the Independent Counsel should be considered as simply a follow-up to this Office's earlier initiatives involving review of Mr. Meese's annual financial disclosure reports.

As you recall, on March 15, 1984 you requested Fred Fielding, Counsel to the President to undertake a determination of the circumstances surrounding Mr. Meese's failure to include in his Standard Form 278 the obligation incurred by his wife in 1981, so that you would be able to make the determination required by Section 204(b) of the Ethics in Government Act of 1978. In his reply to you of March 26, 1984, Fred Fielding makes reference to a March 23, telephone conversation with you in which you indicated that no response was expected from him in view of Mr. Meese's request that "all allegations relating" to him be investigated by the Independent Counsel. Obviously, at that time you were under the impression that the scope of the Independent Counsel's review would include a review of the Standards of Conduct issues. Since that was not the case, we feel that it is incumbent upon the Office of Government Ethics to bring to the attention of Mr. Fielding, in his capacity as Designated Agency Ethics Official at the White House, the following observations:

There are two situations in which Mr. Meese violated the standards of conduct or other applicable statutes. First, with respect to the loan Mr. Meese received from his accountant, Mr. McKean, our examination reveals three ethics violations. Mr. Meese should not have participated when Mr. McKean came before the senior staff twice for approval with respect to positions on the Postal Board of Governors. He had a financial interest in the matter and under the regulations applicable to the Executive Office of the President, 3 C.F.R. § 100.735-8, would be required to abstain from participating in the matter. Also, Mr. Meese violated the agency gift standards, 3 C.F.R § 100.735-14(a)(3), by accepting Mr. McKean's forbearance on the interest due on the loan. Such forbearance is considered a "gift" in the definition found in § 209(3) of the Ethics in Government Act. Additionally, the appearance of impropriety created by his activities runs counter to the agency's general standards of conduct as expressed in 3 C.F.R. § 100.735-4.

Mr. Meese may also have violated 5 U.S.C. § 7351, prohibiting a federal employee from accepting a gift from any other federal employee receiving less pay than himself. The penalty described in that statute is dismissal from service. The plain language of the statute is inflexible. 25 Op Att'y Gen. 46 (1903). However, it is true that standards of conduct regulations governing gifts recognize exceptions in those areas where personal relationships are the motivating factor. The focus of the DAEO should be directed to the off duty relationship between the parties to determine whether the context in which the gift was given and received truly was motivated by an off-the-job relationship.

Second, Mr. Meese's approval of Mr. Barrack's appointment involves an appearance problem under 3 C.F.R. § 100.735-4(c). Because Mr. Meese had received Mr. Barrack's assistance in the sale of his home, he had a personal interest in the appointment. Mr. Meese's participation in the approval of Mr. Barrack's appointment gives the appearance of preferential treatment and raises the question whether Mr. Meese could have retained his impartiality.

The basis for these conclusions and our review of the other allegations discussed in the Independent Counsel's Report are contained in Attachment A.

Attachment A

A. The Thomas Loan and Federal Appointments

Allegations as stated in the Independent Counsel's Report:

On January 7, 1981, Edwin W. Thomas lent Ursula Meese $15,000 to purchase stock in Biotech Capital Corporation on behalf of her children. The allegation is that there is a connection between the loan and federal appointments obtained by members of the Thomas family.

Background:

Edwin Meese and Edwin Thomas met in the late 1960s while working in the Reagan California administration. Over the years, the two developed a close personal and professional relationship.

Shortly after election day 1980, Mr. Meese asked Mr. Thomas to come to Washington to assist him in the Reagan transition organization. He did so, and in December 1980, Mr. Meese offered Mr. Thomas a job as Assistant Counsellor to the President. Mr. Thomas began working in that position on January 21, 1981, but left in February 1982, when he was appointed Administrator of the San Francisco Regional Office of GSA.

When Mr. Thomas and Mrs. Meese arranged the January 7, 1981 loan of $15,000, they did not discuss interest rates, repayment schedules, or the making of a written record of the transaction. This was not the first loan between the Thomases and the Meeses. In the summer of 1979, the Thomases lent the Meeses $8,000 to purchase a car while vacationing in Europe. The car loan was without interest or a fixed due date and was not in writing. In addition, the Thomases lent the Meeses $6,500 during approximately the same period for home repairs. (30) The Meeses repaid these funds in July 1979. Then, on December 10, 1981, the Thomases lent the Meeses money to pay the property taxes on their California home, which they repaid on December 21, 1981, again without interest.

Independent Counsel found no criminal violation and "no direct evidence linking the offer of the loan, or the subsequent making of the loan, to Mr. Meese's offer of a job to Mr. Thomas." (72)

The Common Cause review cites Executive Order 11222, charging Mr. Meese with involvement in a situation that presented the appearance of "losing complete independence or impartiality." (CC 26) Common Cause views Mr. Meese's conduct as reflecting "marked indifference to ethical standards" and as demonstrating his ignorance of basic legal and ethical obligations of public officials.

Conclusion:

Our examination of Mr. Meese's activities reveals no violation of the standards of conduct for the Executive Office of the President (3 C.F.R. § 100), which apply to Mr. Meese as Counsellor to the President, or the Executive Order 11222.

Section 100.735-4 of 3 C.F.R. and Executive Order 11222 require federal employees to avoid any action which might result in, or create the appearance of giving preferential treatment to any person or losing complete independence or impartiality. By accepting financial assistance from Mr. Thomas and thereafter offering him a White House position, Mr. Meese has created an appearance of giving preferential treatment and of losing complete independence of action.

However, subsection (b)(1) of § 100.735-14 permits an employee to accept a loan or other thing of monetary value from a friend when the circumstances make it clear that the personal relationships involved are the motivating factors, which is the situation here. As stated in the Independent Counsel's report, "there is substantial uncontradicted evidence that Mr. Meese's offer of the position to Mr. Thomas was based on the longstanding personal and professional relationship between the two men, rather than any financial transaction between them." (72) This evidence includes a series of oral, interest-free loan arrangements between the Meeses and the Thomases over the years, two of which occurred a year and one-half before the job offer.

The Independent Counsel's report also discusses 5 U.S.C. § 7351, which prohibits any federal government "employee" from accepting a gift from any other federal government employee "receiving less pay than himself." In the terms of the statute, an "employee who violates this section shall be removed from the service." Whether or not the loan would be considered a gift under the statute, Mr. Meese was not a government employee on January 7, 1981, when Mr. Thomas made the loan. Both Mr. Thomas and Mr. Meese testified that Mr. Thomas did offer in 1982 to accept the then-value of the Biotech stock in full satisfaction of the loan, which would have been a gift in the form of forgiveness of indebtedness to the Meeses. However, Mr. Meese rejected this offer. As a result, 5 U.S.C. § 7351 is not implicated in this case.

With respect to Mr. Thomas's position as Regional Administrator of GSA in San Francisco, the Independent Counsel's report concluded that Mr. Thomas obtained that position himself, without Mr. Meese's knowledge. Gretchen Thomas obtained a position as an unpaid intern in the White House Counsel's office in the fall of 1981. In the following summer, she took a job as an attorney-examiner in the San Francisco office of the Merit Systems Protection Board. The evidence reveals that Mr. Meese was unaware that Ms. Thomas was seeking these positions and did not assist her in obtaining them. Finally, there is no evidence that Mr. Meese influenced the Department of Labor's decision to hire Tad Thomas in the fall of 1982.

B. The McKean Loan

Allegations as stated in the Independent Counsel's Report:

In June and December 1981, John R. McKean made two loans to Mr. Meese totalling $60,000. The allegations point to a link between the loans and Mr. McKean's October 1981 nomination to an unexpired term on the U.S. Postal Board of Governors and his January 1983 nomination to a full term on the Board.

Background:

In June 1981, Mr. Meese received an unsecured $40,000 loan from John McKean, with interest due not less than annually. On his financial disclosure statement, Mr. Meese originally listed the loan as one made by Mr. McKean. He later amended his disclosure statement, noting that Mr. McKean was actually the trustee for the loan, which was made from private investment funds available to Mr. McKean's firm.

As Counsellor to the President, Mr. Meese served as one of four members of the Senior Staff Personnel Committee, the group that made final recommendations for Presidential appointments. On July 13, 1981, [illegible] Senior Staff met to make a recommendation for a vacancy on the Postal Boa[illegible] of Governors, but the committee deferred its decision "until Deaver and Meese come back with a recommendation." (121) Although Mr. McKean's name did not appear on the original list, Mr. Deaver suggested him for the position at a subsequent meeting, and he was approved on July 27. When Mr. James Baker indicated he did not know Mr. McKean, Mr. Deaver turned to Mr. Meese and said, "You know him, Ed." (123) Mr. Meese affirmed this, adding that Mr. McKean would be good for the job. No one at the meeting recalled any discussion that Mr. McKean was Mr. Deaver's and Mr. Meese's accountant or that he had just arranged a loan for Mr. Meese.

On December 28, 1981, Mr. Meese called Mr. McKean to arrange to borrow an additional $20,000, something they had discussed previously. In June 1982, Mr. McKean billed Mr. Meese $3,900 for interest due on the $40,000 loan through December 1981. Mr. Meese did not respond, but Mr. McKean did not press him for a while because of the death of Mr. Meese's son in July. In September, Mr. McKean wrote Mr. Meese and mentioned his interest in the full, nine-year term on the Postal Board that would become available in December.

In a November 8 meeting, Mr. McKean agreed to defer Mr. Meese's accrued interest payments of $12,000 until 1983. On the agenda for that same meeting was a discussion of Mr. McKean's desire to serve for a longer term on the Postal Board. (133) Mr. Meese assumes that he supported Mr. McKean in the Senior Staff's November 17 approval of Mr. McKean's nomination to the nine-year post. (135)

After securing an $80,000 bank loan, Mr. Meese paid off his loan from Mr. McKean in September 1983. On February 22, 1984, Mr. Meese paid Mr. McKean the remaining "interest on interest" payments not made by Mr. Meese from January 1, 1983 through September 15, 1983. (138)

The Independent Counsel found no evidence "that Mr. Meese solicited a loan from Mr. McKean with the express or implied intention of assisting him in obtaining a government position, or that Mr. McKean offered to arrange a loan in the expectation or understanding that Mr. Meese would so assist him." (145) Evidence indicated that Mr. McKean did not use his own money for the loan and that the loan was an arm's length transaction. (146) According to the report, one could conclude that Mr. McKean afforded the Meeses "something of value" by arranging, quickly and informally, an unsecured loan with no interest payable for at least one year. The Report notes, however, that "there are credible explanations for the actions of both individuals independent of their financial relationship." (147)

Conclusion:

Our examination of the facts reveals two probable ethics violations by Mr. Meese. The first is Mr. Meese's participation in the Senior Staff approval of Mr. McKean for his positions on the Postal Board of Governors. Second, Mr. Meese's acceptance of Mr. McKean's six-month deferral of the interest due on the loans might have violated the restrictions on gifts to federal employees.

First, Mr. Meese appears to have violated § 100.735-4, § 100.735-8, and possibly § 100.735-9 of the standards of conduct when he participated in the decision making process on the nomination of his accountant, Mr. McKean. On both occasions that Mr. McKean's name came before the Senior Staff, Mr. Meese had a loan arrangement with Mr. McKean. Section 100.735-8 of the standards of conduct admonishes each employee to "avoid becoming involved in situations which present the possibility, or even the appearance, that his official position might be used to private advantage." (emphasis added). In addition, § 100.735-4(c)(4) admonishes against taking action which might result in, or create the appearance of losing complete independence cr impartiality.

It is not clear that Mr. Meese's actions with respect to Mr. McKean implicate § 100.735-9, which prohibits an employee from participating personally and substantially in a particular matter in which to his knowledge he has a financial interest. Personal and substantial participation occurs through "decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise." However, in light of the policy behind the regulation, the financial arrangement leads to appearance problems.

The loan arrangement consisted of two unsecured promissory notes that provided for interest payable "not less than annually." (117) Although it is generally understood that a creditor has a financial interest in his debtor, it is not clear that the converse holds true. While Mr. Meese and Mr. McKean had a financial arrangement containing terms that were generous to Mr. Meese, it does not necessarily follow that Mr. Meese had a financial interest in Mr. McKean. However, this situation does create the appearance of a conflict of interest between Mr. Meese's role as a government official and his private economic interests. The Independent Counsel's finding that Mr. Meese and Mr. McKean discussed both the deferral of Mr. Meese's accrued interest payments and Mr. McKean's desire to serve for a longer term on the Postal Board in their November 8 meeting also supports the allegation of an appearance problem. In addition, Mr. Meese's approval of Mr. McKean's nomination at a time when he had an ongoing financial relationship with Mr. McKean creates an appearance of using an official position to private advantage and of losing complete independence and impartiality.

Second, Mr. McKean's decision not to enforce the creditor's right to immediate payment of interest due July 1, 1982, gave Mr. Meese the use of that amount of money for the remaining six months of 1982. Since Mr. Meese did not give consideration in return, the Ethics in Government Act would consider the forbearance a gift to be reported on Mr. Meese's SF 278. However, because the instructions accompanying the Public Financial Disclosure form omitted the word "forbearance" from the definition of "gift," Mr. Meese probably was not aware that it wes considered a gift when he failed to include it on the form.

3 C.F.R. § 100.735-14(a) prohibits an employee from accepting any gift, loan, or other thing of monetary value from one whose interests may be substantially affected by the performance of his official duty. These prohibitions are designed to free the employee from any form of subjective influence in his decision making. Even though the Independent Counsel found that Mr. Meese did not accept the deferral of interest in return for the nomination, the problem of subjective influence addressed by the standards of conduct remains, and Mr. Meese should not have accepted the deferral.

Also in the area of gifts is 5 U.S.C. § 7351, which prohibits any federal employee from accepting a gift from any other federal employee receiving less pay than himself. This prohibition is echoed in § 100.735-14(c). No criminal penalties attach to § 7351, but the statute provides that an "employee who violates this section shall be removed from the service." At the time of the deferral of interest in 1982, Mr. McKean and Mr. Meese were federal employees. As a member of the Postal Board of Governors, a part-time position, Mr. McKean was earning $10,000 per year and $300 per day for two days of meetings each month, plus expenses. (120) Mr. Meese, as Counsellor to the President, earned more than that in his full-time position. By accepting the loan forbearance from Mr. McKean, Mr. Meese accepted a gift from a federal employee receiving less pay than himself. It is unclear whether this statute was intended to apply only to employees in superior-subordinate relationships or to all employees, regardless of the chain of responsibility. If found to be in violation of this statute, Mr. Meese would be subject to the only penalty listed, dismissal from service.

C. Great American Loans and the Appointments of Luce, Gray, Sandstrom, and Pendleton

Allegations as stated in the Independent Counsel's Report:

In 1981 and 1982, Great American First Savings Bank made three loans to the Meeses. Four officials of the Bank received federal appointive positions in the Reagan Administration. Allegations point to a connection between the willingness of Great American to grant these loans to Mr. and Mrs. Meese and the appointments of its officials to federal positions. Additional questions concern whether the willingness of the Bank to forego timely payments played any role in the appointments. (150)

Background — The Loans:

Prior to President Reagan's election in 1980, the Meeses held two loans from Great American, totalling $120,000, which were secured by the first two deeds of trust on their La Mesa home. In connection with this loan and all the others he obtained from Great American, Mr. Meese dealt primarily with James Schmidt. When he purchased his California home, Mr. Meese went to Great American because four of the Bank's officers had served with him in the Reagan California Administration. The four were Luce, Schmidt, Sandstrom, and Gray.

In February 1981, Mr. Meese obtained a third (bridge) loan from Great American for $132,000, secured by a third deed of trust on the California property, to cover the down payment on his new Virginia home and other related expenses. Great American made a fourth loan to Mr. Meese in February for $150,000, secured by a first deed of trust on the Meeses' Virginia home. Mr. Schmidt, in anticipation of an early sale of the Meeses' California property, instructed the loan department to defer for a "reasonable period" collection of the monthly payments due on the first and second notes. (158) According to the Bank's records, it had afforded such deferrals to other customers. Messrs. Luce, Sandstrom, Pendleton, and Gray denied involvement in the bridge loan, the Virginia house loan, and the deferral decision.

In early 1982, Mr. Schmidt authorized the Bank to take steps to collect the overdue mortgage payments, a move agreed to by Mr. Luce. In line with this, Mr. McHenry, with the loan servicing department, informed Mr. Meese by letter dated February 17, 1982, that he owed $11,499.84. Mr. Meese did not respond to the letter. (164)

Because the third loan, due in February 1982, remained unpaid, the Bank modified its agreement with Mr. Meese, extending the note. Mr. Meese failed to answer the Bank's February, March, and April requests to sign a Modification Agreement. In April, the Bank extended the bridge loan until August and provided a fourth loan of $21,000, secured by a fourth deed of trust, to cover overdue payments. Finally, in May, the Meeses signed the bridge loan Modification Agreement and the $21,000 note. Messrs. Luce, Gray, Sandstrom, and Pendleton were not involved in the $21,000 loan.

On June 17, 1982, Mr. McHenry wrote to the Meeses demanding payment and mentioning the possibility of foreclosure. After Mr. Meese failed to respond, Mr. McHenry sent a certified letter containing the same request, but once again the Meeses did not respond. Upon hearing of Scott Meese's death on July 22, Mr. Schmidt directed Mr. McHenry to postpone collection efforts. (167) When the Meeses sold their house in September 1982, they paid off all four loans, plus the accrued interest.

Background - The Appointments:

1. Luce

Gordon Luce, Chairman of the Board and Chief Executive Officer of Great American, was appointed to a part-time, unpaid position on the President's Commission on Housing. The Senior Staff, of which Mr. Meese was a member, approved the appointment. Around August 1982, Mr. Luce was appointed Alternate Delegate to the United Nations General Assembly and quickly approved by the Senior Staff. No one recalled Mr. Meese proposing, recommending, or supporting Mr. Luce for the position. (172)

2. Gray

Prior to accepting a position in the White House in 1981, Edwin J. Gray served as Vice-President and Director of Public Affairs at Great American. In January 1981, Mr. Gray was offered a position on the Federal Home Loan Bank Board, which he declined, but he expressed his interest in a White House position. A few days later Mr. Meese offered him the position of Deputy Assistant to the President and Director of the White House Office of Policy Development, which he accepted. (174) Around June 1982, Mr. Gray was again offered a position on the Federal Home Loan Bank Board. According to Mr. Gray, Mr. Meese supported him for the position. Mr. Gray ultimately declined the nomination and returned to California, where he assumed the post of First Vice-President and Director of the Executive Affairs group at Great American. From January 1981 to August 1982, when Mr. Meese held multiple Great American loans, Mr. Gray was not associated with the Bank.

After Mr. Gray had declined the Board position, another person was selected for the appointment. However, when that fell through, Mr. Gray was again contacted about a position on the Board, this time the Chairmanship. In January 1983, Mr. Gray was selected to become Chairman of the Federal Home Loan Bank Board. After his confirmation hearings, Mr. Gray wrote to Mr. Meese, thanking him for his assistance, because he had heard that Mr. Meese had strongly supported his nomination. (176) In the Senior Staff meeting, Mr. Meese had supported Mr. Gray's candidacy.

3. Sandstrom

On December 30, 1981, while working as Executive Vice-President and General Counsel of Great American, Marc Sandstrom was appointed as one of six recess appointees to the Board of Directors of the Legal Services Corporation. After his formal nomination to the Board in March 1982, Mr. Sandstrom resigned from the Board and withdrew his name from consideration as a permanent appointee. Mr. Meese approved Mr. Sandstrom and might have recommended or seconded his nomination.

4. Pendleton

In January 1981, Clarence Pendleton joined Great American's Board of Directors, but he was not involved in any Bank decision regarding the Meeses. On September 30, 1981, OPP recommended to the Senior Staff that Mr. Pendleton be nominated to the Civil Rights Commission. Mr. Meese supported Mr. Pendleton's nomination, but said he was unaware of Mr. Pendleton's association with the Bank at that time. (184)

According to the Common Cause report, Mr. Meese violated the ethics standards by participating "in decisions to recommend individuals who he knew were high officials of Great American First Savings Bank for government appointments at a time when he had borrowed several hundred thousand dollars from the Bank on favorable terms, including forbearance of monthly payments on some of his loans, and in fact was in default on one of his loans." (CC 24)

The Independent Counsel's Report found "no evidence that Mr. Meese solicited or received something of value from Messrs. Luce, Gray, Sandstrom or Pendleton as individuals." (184) Mr. Meese did receive something of value from Great American, but Great Amercan's handling of the Meese loans was not unusual for "preferred" customers and was sound from a business point of view.

The Report concluded that Mr. Meese was involved in varying degrees in the appointments of Messrs. Luce, Gray, Sandstrom, and Pendleton, but that the Meeses' transactions with Great American were unrelated to the federal appointments. The evidence showed that the Board's handling of the Meeses' transactions was similar to its dealing with other customers. In addition there was no evidence that the four men were involved materially, if at all, in the Meeses' dealings with the Bank. Finally, the evidence showed that all four were longtime supporters and friends of President Reagan who did not need Mr. Meese's influence to obtain federal jobs.

Conclusion:

Our examination of the facts leads us to conclude that Mr. Meese did not violate the standards of conduct. Because none of the men had participated in the loans to him, Mr. Meese did not have any favors to return, and there was no conflict of interest. Any action he took on their behalf appears to have been prompted by previous associations with the persons in state government and civic affairs. If Mr. Meese had wanted to avoid any appearance of a conflict of interest, he could have recused himself when the four men came before the Senior Staff, but that would not have been required.

D. The Sale of the Meeses' La Mesa House

Allegations as stated in the Independent Counsel's Report:

"In August 1982, Thomas J. Barrack, Jr., an attorney and real estate developer, assisted the Meeses in the sale of their La Mesa property. In mid-November 1982, Mr. Barrack accepted a non-Presidential appointment as Deputy Undersecretary of Interior. Shortly thereafter, he was offered and accepted a position as Assistant Secretary of Commerce for Trade Development, but later declined the position and left the government." (151)

A connection has been alleged between Mr. Barrack's federal appointments and his involvement in the sale of the Meeses' La Mesa house.

Background:

In August 1982, Pendleton James, former Director of the Office of Presidential Personnel and a friend of the Meeses, asked his friend Thomas Barrack to assist in the sale of the Meeses' home. The Meeses had been trying unsuccessfully to sell their home for more that a year and one-half.

In August 1982, after speaking with Mr. Meese on the telephone, Mr. Barrack arranged a sale of the Meeses' home involving Irv Howard, a builder who had worked with Mr. Barrack, and Ted Elkin, a close friend of Mr. Barrack, at an agreed upon price of $300,000. Shortly thereafter, Great American Bank notified Meese's representative on the sale that it would need more money to cover the loans to Mr. Meese secured by the California property as well as payments due on Mr. Meese's Virginia house. Mr. Howard agreed to a price $7,500 higher than the initial price. (198)

In August, Mr. Barrack lent Mr. Elkin $70,000, with which Mr. Elkin reimbursed Mr. Howard for the down payment on the House. By early November, after Mr. Howard had made one monthly payment on the property, Mr. Elkin took over the mortgage payments with money supplied by Mr. Barrack. Around December, Mr. Barrack cancelled Mr. Elkin's $70,000 note, making the money a gift to Mr. Elkin. In sum, Mr. Barrack contributed, through Mr. Elkin approximately $83,000 in connection with the house. (203)

From 1980 to 1982, Mr. James tried to interest Mr. Barrack in a high-ranking federal position, but to no avail. In late July 1982, Mr. Barrack finally decided to consider federal employment and told Mr. James that he would be available in November or December 1982.

In early September 1982, Mr. James arranged interviews for Mr. Barrack at the White House Personnel Office. Mr. Barrack agreed with Mr. James that he should not bring up his role in the sale of Mr. Meese's house during any interviews relating to a federal job. While in Washington, Mr. Barrack met Mr. Meese for the first time. In a note written after their meeting, Mr. Barrack thanked Mr. Meese for "taking time from your hectic schedule to meet with me this morning." He concluded: "Again, I am very grateful for your counsel and encouragement and if I may be of any aid or assistance please call on me." (210) Mr. Barrack explained that his comment was likely a reference to a discussion of the problems involved in moving from the West Coast to the East, which was prompted by Mr. Barrack's mention of a possible relocation to New York City.

In October 1982, Mr. James arranged for Mr. Barrack to explore high-level government positions with five cabinet secretaries. Mr. James wrote in a letter to each secretary, "I should mention that Ed Meese knows Tom and I'm sure also would endorse my strong support." (212) Mr. James forwarded a copy of that letter to Mr. Meese, asking "Is there anybody else you think Tom should see when he is in Washington?" (213) Mr. Meese did not recall the October letter or when he learned of Mr. Barrack's interest in a federal position.

On December 1, 1982, Mr. Barrack became Deputy Undersecretary of Interior. In January 1983, Mr. Barrack told Secretary Watt that he had done all he could in his Interior position and would not continue there. Commerce Secretary Baldrige offered Mr. Barrack a position as Assistant Secretary for Trade Development, which he accepted.

On February 14, 1983, the Senior Staff approved the Commerce appointment. Although he did not recall the matter, Mr. Meese assumes he raised no objection. (221) In May 1983, Mr. Barrack declined the Commerce position and returned to California.

According to Common Cause, "the facts found by the Independent Counsel reveal clear insensitivity to the ethical standards required of a nominee for Attorney General." (CC 15) Common Cause points to Mr. Meese's knowledge that Mr. Barrack had rendered important assistance to the Meeses in the sale of their house and Mr. Meese's subsequent participation in approving Mr. Barrack's appointment to a sub-Cabinet position.

The Independent Counsel's Report found "no direct evidence that Mr. Meese's non-veto of Mr. Barrack's appointment to this job was based upon his earlier receipt of assistance from Mr. Barrack in the sale of the Meeses' California property." (225) The Report also found no evidence of Mr. Meese's involvement in securing the job for Mr. Barrack.

As a member of the Senior Staff, Mr. Meese was responsible for approving recommendations for presidential nominees. When Mr. Barrack sought appointment to the Commerce position, the decision came before the Senior Staff. Because Mr. Meese had received Mr. Barrack's assistance in the sale of his home, he had a personal interest in the appointment. In light of that personal interest, Mr. Meese's involvement in Mr. Barrack's appointments gives the appearance of preferential treatment and raises the question whether Mr. Meese could have retained his impartiality.

Conclusion:

Although the Independent Counsel's Report concluded that there were no criminal violations, there is an appearance problem. Section 100.735-4(c) prohibits employees from engaging in activities that might create the appearance of giving preferential treatment or of losing independence or impartiality.

E. Mr. Meese's Army Reserve Status and Rank

Allegations as stated in the Independent Counsel's Report:

Mr. Meese had his U.S. Army Reserve status changed from Retired to Active in July 1981. Then, in 1983, he received a promotion from Lieutenant Colonel to Colonel. Allegations appeared in the news suggesting improprieties with respect to these actions and a link between them and the nomination of General William Berkman in January 1983 to a second four-year term as Chief, Army Reserve.

Background:

Mr. Meese has been a longtime member in, and an active supporter of the Army Reserve. In June 1981, he gave the principal address at the annual meeting of the U.S. Army Civil Affairs Association in San Francisco. General Berkman, Chief of Army Reserve, and Colonel Joseph Sullivan, General Berkman's program and liaison officer, attended the meeting. A conversation between Mr. Meese and Col. Sullivan brought out the fact that Mr. Meese had been in the Retired Reserve since 1977. When Colonel Sullivan asked Mr. Meese if he would be interested in returning to active status, he responded that he would, "as long as this could be accomplished consistent with Army regulations." (256)

Thereafter, Col. Sullivan initiated action to return Mr. Meese to active status and to obtain Mr. Meese's promotion to colonel. In a Pentagon meeting concerning Mr. Meese's return to active status, those in charge decided that Mr. Meese could return to active status in accordance with applicable regulations. (257) When newspaper articles brought this action to the public's attention, the Inspector General of the Army began an investigation of the activities surrounding Mr. Meese's change in status. The IG report concluded that "applicable laws, regulations, and administrative procedures were misapplied, violated, or ignored in order to return Mr. Meese to an active status in the United States Army Reserve." (260)

In the fall of 1982, Col. Sullivan took action to obtain a promotion for Mr. Meese. Because Mr. Meese did not meet the educational requirements for promotion, the Deputy Chief of Staff for Personnel, Lieutenant General Max Thurman, wrote a memorandum on whether the promotion board could waive the educational requirements or award constructive credit. In the November 1, 1982 memorandum, Lt. General Thurman found that the board could award constructive credit, but he recommended against it because of the risk that the matter would give the appearance of preferential treatment to Mr. Meese. (267) However, the credit request went before the promotion board in November, and Mr. Meese received the promotion.

Although Secretary Marsh recalled sending Mr. Meese a copy of the memorandum and telephoning him about it, Mr. Meese had no recollection of the memorandum. Mr. Meese recalled speaking about constructive credit only with Col. Sullivan, telling him that he would be willing to request constructive credit, but only if the regulations permitted it. Col. Sullivan confirmed that this was Mr. Meese's consistent position. (269-270) Secretary Marsh also testified that Mr. Meese said he intended to take no position and wanted to stay out of the matter.

When General Berkman came up for appointment to another term as Chief, Army Reserve, Mr. Meese recommended him to Secretary of Defense Weinberger and Secretary of the Army Marsh because he had heard good things about Berkman and he himself thought General Berkman was doing a good job. Mr. Meese believed these conversations took place after November 1, 1982, with the call to Secretary Weinberger taking place in December.

By mid-December 1982, the decision to reappoint General Berkman had been made. The Independent Counsel concluded that Mr. Meese's telephone call to Secretary Weinberger might have been one of several factors in General Berkman's reappointment, although Secretary Marsh stated his belief that General Berkman would have been reappointed without any communication from Secretary Weinberger or Mr. Meese.

The Independent Counsel found no criminal violations and no evidence that Mr. Meese knew of improper actions taken to return him to active status in the Army Reserve. In addition, there was no direct evidence that Mr. Meese's recommendation of General Berkman was linked to a perception that General Berkman had given him something of value. (279-280)

Common Cause concludes that Mr. Meese's actions demonstrate his indifference to the appearance of exchanging his government influence for private gain. In support of this conclusion, Common Cause cites Mr. Meese's support of Berkman's reappointment at a time when he himself was seeking a promotion. Common Cause also indicates that Mr. Meese knew of the preferential treatment because Secretary Marsh had called him to discuss the memorandum, which advised against constructive credit and warned of the appearance of preferential treatment. In the words of the Common Cause report: "Nonetheless Mr. Meese allowed others to press his cause and was content to accept the military promotion appearing to result from his White House position." (CC 21)

Conclusion:

Our review of the facts fails to uncover any standards of conduct violation under 3 C.F.R. § 100.735-4. Mr. Meese contends that he did not know of the preferential treatment given to his requests and there is no indication that Mr. Meese used his position in the White House as leverage in his requests for a change in status and a promotion. As indicated by the report, Mr. Meese sought to have these two things accomplished only if they could be handled consistent with Army regulations.

With respect to General Berkman's appointment, Mr. Meese did not violate the standards of conduct. Although initially Mr. Meese's actions could create an appearance of using his White House position for private gain, the facts demonstrate that there was no actual impropriety. Because Mr. Meese was unaware of any preferential treatment on his behalf, he was not recommending General Berkman in exchange for assistance he received in the status change and promotion. Even if Mr. Meese had been aware of the preferential treatment in the grant of credit, the circumstances fail to support the suggestion that General Berkman played a key role in obtaining the credit and promotion. Therefore, Mr. Meese's decision to recommend General Berkman was based on objective criteria.

F. Mr. Meese's statements to the House Post Office and Civil Service Committee and the Senate Judiciary Committee About Carter Campaign Materials

The Independent Counsel's report noted no evidence of criminal law violations by Mr. Meese with respect to his statements to the Congressional committees concerning the Carter briefing papers. Our review of the facts fails to uncover any standards of conduct violations by Mr. Meese in this area.

G. Payments from Transition Organizations

Allegations stated in the Independent Counsel's Report:

Articles in the Washington Post in June 1984 raised the question of whether payments to Mr. Meese from the Presidential Transition organizations were lawful.

Background:

In August 1980, the Presidential Transition Trust was established. It was designed to raise money to fund the Reagan-Bush Planning Task Force, a group intended to conduct pre-transition activities, such as identifying government positions to be filled. After the election, several persons soon to become members of the administration received checks from funds remaining in the Trust. Mr. Meese received a check for $10,000 from the trust designated for "moving expenses," which he deposited in his bank acount on November 22, 1980.

In early December, according to the lawyer for the Trust, Mr. McPherson, Mr. Meese expressed the need for money to pay the expenses of people moving from California to Washington to work in the Administration. Mr. McPherson learned of a legal problem associated with having the Trust pay moving expenses to prospective government employees. The Office of Legal Counsel, Department of Justice, told Mr. McPherson that they would probably consider payment of "moving expenses" by the Trust to prospective government employees to be a violation of 18 U.S.C. § 209(a), which bars payment or acceptance by any person of "supplementation of his salary as a government employee." (345)

In December or January, Mr. Meese learned of the legal problem in receiving the check for moving expenses. Mr. Meese recalls telling someone to change the records of the Trust to reflect that the payment to him was for consulting services. Mrs. Von Damm, one of the persons authorized to sign Trust checks, subsequently changed the notations on several of the checks to read "consulting fees."

According to Messrs. McPherson, James, and others, Mr. Meese established the Planning Task Force, directed it, and did substantial work for it for which he received no other payments. They thought Mr. Meese was entitled to compensation for those services, so they viewed the "consulting fees" as legitimate compensation. (350) As required, Mr. Meese reported the payment of "consulting fees" as income for tax purposes and disclosed it on his SF 278.

Mr. Meese also received payments from the Presidential Transition Foundation. The Foundation's purpose was "to facilitate an orderly transfer of the power of the executive branch of the United States government from the Administration of President Jimmy Carter to the Administration of President-elect Ronald Reagan." (351) Mr. Meese, president and director of the Foundation, received three monthly payments for consulting fees in November, December, and January. In addition, the Foundation wrote two checks for Mr. Meese's December 1980 and January 1981 rent. Although no other directors received consulting fees, a number of non-directors received such payments. The Foundation also paid monthly rent for several persons other than Mr. Meese, but he was the only director to receive such payments.

Common Cause does not dispute Independent Counsel's conclusion that there was no criminal violation. However, with respect to the Transition Trust payments, it finds "something disquieting about Mr. Meese's conduct when viewed in light of Mr. Meese's insensitivity to ethical standards in other situations affecting his finances." (CC 28) Common Cause adds: "But surely in this difficult situation, an honorable man would want to return the money, submit a statement of the hours spent in consultation, and then obtain payment of his fee." Common Cause does not tie these observations to any specific violation of the standards of conduct.

Conclusion:

Our review of the Independent Counsel's report fails to reveal any violation of 3 C.F.R. § 100.735-13, which prohibits supplementation of a federal employee's salary as compensation for his federal service. We concur with the Independent Counsel's conclusion, based on the facts he presented, that the monthly consulting fees and the rent payments appear to be legitimate compensation for services Mr. Meese performed for the transition effort. They were not an illegal supplement to his federal salary, because Mr. Meese was not receiving a federal salary at the time. Even if Mr. Meese had received some compensation from federal transition funds, the Office of Legal Counsel takes the position that private funds could supplement those funds, because persons working in a presidential transition are not "federal employees" within the meaning of section 209. The Office of Government Ethics has reached the same conclusion in a prior opinion addressing the presidential transition issue.

H. Other Allegations

1. Stock Trading by Mr. Meese and His Family

Allegations as stated in the Independent Counsel's Report

Mr. Thomas's close friendship with Dr. Earl Brian, Chief Executive Officer of Biotech Capital Corporation, and Dr. Brian's relationship with Mr. Meese, prompted allegations that the Meeses may have engaged in "insider trading" with non-public facts about either Biotech or American Cytogenetics. The Independent Counsel also investigated Mr. Meese's role in Dr. Brian's nomination to the National Science Board.

Background:

At Edwin Thomas's suggestion, Mrs. Meese borrowed $15,000 in January 1981 to purchase 2,000 shares of Biotech for two of her children. In the spring of 1981, Mrs. Meese did not recall knowing about Dr. Brian's role in Biotech. Mrs. Meese purchased 200 shares of American Cytogenetics, Inc., at the suggestion of Mr. Thomas. Around the time of the stock purchase, Dr. Brian was negotiating for the purchase of American Cytogenetics. Although the Independent Counsel's report is not clear in this area, it appears that Dr. Brian subsequently purchased a substantial number of shares of Cytogenetics as an investment for Biotech.

In the spring of 1982, the Senior Staff approved Dr. Brian's nomination to a position on the National Science Board, although Dr. Brian withdrew his name before his nomination by the President. Mr. Meese demonstrated his support for Dr. Brian by sending a memorandum to the OPP recommending Dr. Brian for the position and by appearing as a supporter of Dr. Brian on the list that came before the Senior Staff. Mr. Meese knew Dr. Brian from the Reagan California Administration. Also, in 1981, Dr. Brian had served as an advisor with an advisory group on health care cost containment at Mr. Meese's request.

The Common Cause report does not address these allegations, but the Independent Counsel's report found no evidence that Mr. or Mrs. Meese had received non-public information about either Biotech or American Cytogenetics. In fact, Mr. Meese stated that he was unaware that Biotech owned American Cytogentics until 1984. Although the evidence demonstrates that Mr. Meese supported Dr. Brian's nomination to the National Science Board, the Independent Counsel found no evidence that Mr. Meese knew of any benefit that might have flowed from Dr. Brian or his companies to the Meeses.

Conclusion:

We found no ethics violations in our review of the facts. Mr. Meese indicated that he did not know of Dr. Brian's role in Biotech or American Cytogenetics when he gave his support to Dr. Brian's nomination. As a result, he did not support the nomination in the hope of achieving some private gain. In light of his lack of knowledge regarding the financial relationship between Dr. Brian and the stocks held by his wife, Mr. Meese did not violate § 100.735-9, which would have required him to recuse himself in a matter in which he had a financial interest. In addition, Mr. Meese knew Dr. Brian from the Reagan California administration and had a valid basis for approving his nomination independent of the financial relationship.

2. Special Treatment for Business Entities in Which Mr. Meese had a Financial Interest

Allegations as stated in the Independent Counsel's Report:

The allegations raised the question whether the Questech Corporation received favorable treatment from the Small Business Administration due to the influence of Edwin Meese or others in obtaining a license as a Small Business Investment Company. Questech is a wholly-owned subsidiary of Biotech, the stock of which Mrs. Meese purchased for her children.

Background:

In September 1980, before Mr. Meese began working at the White House, Questech applied for a license. The license review, involving a number of different offices within the SBA, lasted until the spring of 1981, when four of the five reviewing SBA offices had approved the license. However, the application did not receive final approval until June 26, 1981, due to a moratorium on the issuance of further licenses that began on April 17, 1981. On April 28, 1981, on the advice of several subordinates, the Administrator lifted the moratorium on applications under review prior to April 17, 1981.

None of the officials interviewed recalled any communication from Mr. Meese or anyone else at the White House about granting special treatment to Questech. (249) In addition, Independent Counsel's report found no evidence that Mr. Meese communicated with the SBA concerning the Questech application and no evidence that anyone communicated with the SBA at Mr. Meese's direction. (253)

Conclusion:

We conclude from the facts in the Independent Counsel's report that Mr. Meese did not violate any standards of conduct in this situation.

3. Reporting of Travel-related Expenses

Allegations as stated in the Independent Counsel's Report:

The allegations focused on Mr. Meese's failure to disclose a number of travel reimbursements on his Public Financial Disclosure Form.

Background:

Mr. Meese stated that he relied solely on his staff to determine, in consultation with White House Counsel's Office, which trips to report on his SF 278. The staff persons preparing the materials for Mr. Meese's 1982 and 1983 filings confirmed Mr. Meese's statement and indicated their confusion regarding the reporting rules for travel-related expenditures. (360)

According to the Independent Counsel's Report, there was no pattern to the trips that Mr. Meese failed to report on his SF 278s. The report attributes the problems to staff confusion as to what was reportable.

Conclusion:

Given the facts set forth in the report, we concur in the Independent Counsel's conclusion that Mr. Meese's failure to disclose certain travel-related expenditures was not "willful". Therefore, there is no basis for a criminal prosecution or a standards of conduct violation.

4. William Moss Institute

Allegations as stated in the Independent Counsel's Report:

Mrs. Meese received substantial sums of money in 1982 and 1983 from the William Moss Institute. Independent Counsel investigated these payments to determine whether they violated any federal criminal statute.

According to the Independent Counsel, the salary payments did not come within his jurisdiction unless they were related to the use of improper influence by Mr. Meese. Neither Mr. Moss, whose donations served to underwrite Mrs. Meese's salary, nor any member of his family, has been considered for government office or received any government contracts during Mr. Meese's tenure in office. The Meeses played no role in the tax exemption granted the William Moss Institute.

Conclusion:

Independent Counsel found no basis for a criminal prosecution of Mr. Meese in this case and, based on the facts contained in the report, we find no basis for any standards of conduct violations.

5. The Cuff Links

Allegations as stated in the Independent Counsel's Report:

While accompanying the President on a trip to Japan and South Korea in the fall of 1983, Mr. Meese accepted a pair of jade and gold cuff links, worth approximately $375, from the South Korean government, which he did not surrender upon his return. It was alleged that Mr. Meese violated federal laws requiring federal employees to surrender any tangible gift with a retail value greater than $140 that they receive from a foreign government. Mr. Meese later delivered his cuff links to the White House Counsel on March 28, 1984, the same day CBS news had contacted the White House about the matter.

Background:

The cuff links were placed as souvenirs in the hotel rooms of the thirteen persons accompanying the President on the trip to Korea. Mr. Meese knew of the $140 limit on gifts, but he found nothing in the appearance of the cuff links indicating that they were worth more than that. In fact, Mr. Meese assumed the cuff links were similar to presidential cuff links distributed by the White House, which he estimated to be worth $10. (367) As a result, Mr. Meese and nine other recipients did not surrender the items upon their return.

The South Korean government knew of the gift limitation and in March 1984 a Korean official informed the U.S. Embassy in Seoul that his "best estimate" of the cuff links' value was $100 and that he "could categorically and officially deny" that they were worth "as much as $300." (367) However, two separate jewelers appraised the cuff links and estimated their value to be approximately $375.

Under the Foreign Gifts and Decoration Act, 5 U.S.C. § 7342, federal employees may accept and retain gifts "of minimal value tendered and received as a souvenir or mark of courtesy," but "a tangible gift of more than nominal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States." The employee must deposit such gifts with his "employing agency" within 60 days of receipt. The regulations in effect in the fall of 1983 set "minimal value" at $140. 41 C.F.R. § 101.49.001-5. The Attorney General has authority to bring a civil action against an employee for a knowing violation of the Act.

The Independent Counsel's report found no basis for taking legal action against Mr. Meese. The facts suggested that Mr. Meese had failed to surrender the cuff links because of a good faith belief that their value was within acceptable limits. In addition, the records demonstrated that Mr. Meese had routinely deposited with the Gift Unit other gifts he had received as a government employee, and he reported on his SF 278 those he was permitted to keep. (368)

Conclusion:

We concur with the Independent Counsel's conclusion, based on the facts he presented, that Mr. Meese did not violate 5 U.S.C. § 7342. Because he did not violate 5 U.S.C. § 7342, we do not find a violation under the standards of conduct at § 100.735-14(d), which use § 7342 as their standard for gifts from foreign governments.

6. Federally Administered Grants to Pepperdine and American Universities

Allegations as stated in the Independent Counsel's Report:

The allegations raise the question of whether Mr. and Mrs. Meese intervened on behalf of Pepperdine University and American University to obtain federal grants administered by the Office of Juvenile Justice and Delinquency Prevention.

Background:

Both Pepperdine University and American University received grants. Mr. Meese belongs to the "Associates of Pepperdine University," an honorary organization of friends of the University, and serves on the National Advisory Board of American University. Mrs. Meese serves as a trustee of American University. All persons involved in the grants deny that Mr. or Mrs. Meese intervened in any way with respect to the grant.

Conclusion:

The Independent Counsel found no evidence to support an allegation of intervention by the Meeses on behalf of American University or Pepperdine University. Similarly, we find no violation of the standards of conduct.

Mr. **Martin**. I did it because I thought it was the proper thing to do, Senator, but after much excruciating—I am very uncomfortable having to do that.

The **Chairman**. Now, Mr. Davis and Miss Feathers, you have heard the answers given by Mr. Martin to the questions I have propounded, and I would ask each one of you, do you have any disagreement, or would you care to elaborate on any point that has been raised, or is there any comment that you would like to make? Mr. Davis first.

Mr. **Davis**. Senator, basically I agree with Mr. Martin. I do have some comments. I agree with Mr. Martin, that I think a release of an internal document, because that is what this was, has a chilling effect on our office. It would have a chilling effect on any office where you are dealing with a document that is as basic as this was.

We were given a task. We felt that we had to raise all the issues that might surface in a review of this matter, and, perhaps in the light of this, I would write this document completely different at this point in time. However, at that time, we were trying to surface the issues involved in our review of the independent counsel's report. It did not stop there, and it went on And I guess that is the point, the only point that I would like to make.

I also agree that the procedure employed by Mr. Martin in his review, in our review of Mr. Meese's public financial disclosure statement as a nominee, were exactly the way that I would have handled the matter if I were in charge of the office. So, yes, I am in complete agreement.

The **Chairman**. I believe that besides the independent counsel, Common Cause has raised some questions too, have they not?

Mr. **Davis**. They certainly have, Senator. But as pointed out in this basic document, Common Cause's report is nice reading, and we did read it. But basically we—the document that had the investigation, the facts that we were interested in was the independent counsel's report, and that is why there is more reference to the independent counsel's report in this paper.

The **Chairman**. I believe Common Cause was included in the overall study you made?

Mr. **Davis**. That is correct.

The **Chairman**. The points you raised?

Mr. **Davis**. That is correct, Senator. That is correct.

The **Chairman**. Or if anybody else raised any points, would you have considered them, too, just to play safe?

Mr. **Davis**. Yes, sir; plus we mentioned in the paper that we also had our existing financial disclosure files which were included.

The **Chairman**. And, Miss Feathers, I would ask you the same question.

Do you have any disagreement, or would you care to elaborate on any point that has been raised, or is there any comment that you would like to make in connection with this matter?

Miss **Feathers**. Well, I agree with what both Mr. Martin and Mr. Davis have said concerning the process we went through regarding this, and I guess I will just reiterate that when we prepared this, we were told to look for anything possible, you know, appearances, whatever, in preparing this memo and——

The **Chairman**. In other words, you were asked to scrutinize anything possible that might arise that you felt deserved further consideration?

Miss **Feathers**. That is right, and in particular I guess the—in light of the Common Cause report out, too, I think we wanted to make sure that we had evaluated things that were stated in that report in order to have our own picture of how things had happened, and our own analysis, so that if anything was raised, that we would be able to answer that.

The **Chairman**. Now, Mr. Davis and Miss Feathers, I want to ask you again, and you can answer separately: Are you totally satisfied that Mr. Meese did not violate any standards of conduct, and that no conflict of interest exists? Mr. Davis?

Mr. **Davis**. Yes, sir; Senator, I am, but I want to qualify my statement because I think that is the way I approached it, and I want to give the facts to the committee. I do not think there was a violation of any of the ethics standards. My conclusions in the entire—this paper, our subsequent discussions—my conclusions were this: That there was one matter that constituted an appearance of impropriety that required some sort of corrective action, and that that corrective action was taken so that the matter was handled properly, and that is the sum of my—of what happened in this case.

The **Chairman**. What was a corrective action?

Mr. **Davis**. The corrective action was this, Senator. I felt that in connection with the McKean loans, and the nomination of Mr. McKean to the Postal Board, that this overall pattern of activity on the part of Mr. Meese constituted a matter that required something to be done. I was concerned, and personally what I wanted to see done, and what I recommended to the Director throughout, once we finished our discussion and disposed of the other elements, I wanted, first of all, Mr. Fielding, the counsel to the President, and his staff to be made aware of this point. And I felt at that point, once counsel's office was aware that we had some concerns in this area, that they would talk to Mr. Meese about this, this particular concern that we had. And I felt that counseling with Mr. Meese was all that was necessary and that that ended the matter, and it was a matter that was within the executive branch.

The **Chairman**. Miss Feathers, how about you?

Miss **Feathers**. I too did not find anything that I thought rose to the level of a violation. I did feel that there was an appearance problem in the one, in the one situation, and as a result of that, I felt that it should be brought to the ethics official's attention over at the White House.

The **Chairman**. And Mr. Martin's attention?

Miss **Feathers**. Oh, yes. We brought—he knew about it—our thoughts on that all along, and that is why he went ahead and brought it to the attention of Mr. Fielding at the White House, particularly because Mr. Davis and I had had those concerns, that that should be raised, and he thought that was appropriate action as well.

The **Chairman**. Now, when you and Mr. Davis brought this to Mr. Martin's attention, then all of you discussed the matter and resolved it?

Mr. MARTIN. Senator, it was—once the memorandum came to my attention, it—I developed—we would develop some facts. I would bring them in. It was a series of meetings and discussions over a period of a couple of days, and I might add Mr. Campbell, my chief counsel, was a part of all of this. So it was an ongoing deliberative process of saying, "Okay. What about this? What about this fact? Does this mean something?" We were—in other words, I—if you have that, the working paper, you will see my notes scratched on the side, and you will see that I had a lot of questions not only about—had questions not only about the things they raised but other matters that they raised and said were not problems.

I was concerned about the Thomas situation, and the loans to Mrs. Meese, and I asked them, I doublechecked them on that to say, "Hey, is this a problem?", and they were confident it wasn't. So it certainly wasn't a—you know, the media has tried to make it say, "Hey, they sent this in to Mr. Martin. He overruled them and said there is no problems." That is the furtherest thing from the truth, and I am really outraged by it, and I just—I think I am professionally hurt by it, and it is really just a—it is sad that it happened that way, and I know it is not your fault, and it is not mine, but that is how it appeared.

The CHAIRMAN. Now, Mr. Martin, from your investigation of this matter, and Mr. Davis and Miss Feathers, are you now in a position to tell the committee whether or not you feel Mr. Meese violated any code of ethics of the government?

Mr. MARTIN. No, I do not believe he did, Senator.

The CHAIRMAN. How is that?

Mr. MARTIN. I do not believe he did.

The CHAIRMAN. I see.

Mr. MARTIN. I am certain he did not.

The CHAIRMAN. And, Mr. Davis, you feel the same way about that?

Mr. DAVIS. That is correct.

The CHAIRMAN. And, Miss Feathers, you feel the same way?

Miss FEATHERS. Yes. That is correct.

The CHAIRMAN. Now, how would you generally characterize this matter in accordance with your position?

Mr. MARTIN. How would I characterize the matter?

The CHAIRMAN. Of Mr. Meese's ethical standards.

Mr. MARTIN. Well, I—he did not—based on my examination and the—my determinations made after the appearance was raised, I determined he did not violate any ethical standards and he acted with propriety, but that—there was this appearance problem that we had to direct our attention to.

The CHAIRMAN. If you felt he had, would you hesitate to say otherwise?

Mr. MARTIN. Senator, if I had thought Mr. Meese had violated any standards of conduct, I probably would have made quite an issue of it, and—and in as professional a way as I could, but I—yes, it would have been quite a different thing.

The CHAIRMAN. In other words——

Mr. MARTIN. Appearance is one thing. An actual violation of some standards of conduct or some law or—is quite another thing.

The **Chairman**. In other words, because you are with the Reagan administration, would you deviate from your duty to try to assist Mr. Meese if you thought it was improper?

Mr. **Martin**. I appreciate your answer that—asking that question, and I certainly would have maintained my independence and objectivity, regardless. And I want to say that there has been no pressure on me to do anything. I—it is kind of an unfriendly place I—really, I, I have had no pressure and no—from anyone regarding this matter, or any other matters.

The **Chairman**. What you did—I assume from what you say, you thought you did your duty and there it rests, and you stand by it, is that correct?

Mr. **Martin**. That is correct, Senator.

The **Chairman**. Mr. Davis, you feel the same way?

Mr. **Davis**. That is correct, Senator. I——

The **Chairman**. And, Miss Feathers, you feel the same way?

Miss **Feathers**. Yes, I do.

Senator **Metzenbaum**. I think Mr. Davis was trying to say something additional. Were you, sir?

The **Chairman**. Do you want to say anything else, Mr. Davis?

Mr. **Davis**. That was the point. Thank you, Senator.

The **Chairman**. Now, the distinguished ranking minority member, Senator Biden.

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator **Biden**. Thank you very much, Mr. Chairman.

As I said several times since this hearing began, one of my problems with all of this is that I had difficulty, when you look at the statutes, arriving at any conclusion that was not subjective. I would like to take a slightly different tack with you.

Do you think we should change the law? I am not being facetious. I am being very serious, because I think, as I read your report, as I read the staff memorandum and your cover letter, Mr. Martin, and the statutes myself time and time again as relate to this, it seems to me that if you wanted to, you could find anybody, anybody guilty of violating the appearance of impropriety.

I think some of these statutes are absurd. I mean that, and so although I have made conclusions relative to Mr. Meese, and I made those statements to Mr. Meese yesterday, because I did not want to do it in the absence of him or his family, I wanted to say it straight out, I have real difficulty with these statutes.

For example——

Mr. **Martin**. Senator, we have to interpret them constantly. We have real difficulty with them too. I share your concern.

Senator **Biden**. Yes. And I do not—I mean, I do not understand why you take the job. Section 100.735-8 of the Standards of Conduct reminds each employee "to avoid becoming involved in situations that present the possibility, or even the appearance that the official position might be used for private advantage." Now, for example, you have the situation, with regard to loans that were made by a good friend of the Meeses, with whom they had been involved with a long time, had previous loans, and then, after the fact, this person becomes involved in the Government.

I mean should there be a law that says that if someone with whom I have had a relationship long before they got in the Government, that I cannot continue that relationship once we are both in the Government?

Mr. **Martin**. Well, to answer you, it is a silly thing, but there is an exception for personal relationships, and you have to recognize there are personal relationships.

Senator **Biden**. I mean, it is so vague as to how that could be interpreted. I am going to successfully offend everyone who is involved with this case, I am sure, before this is over, but I think since this is one of the few times I think we are going to have an opportunity, in this committee, to go into some detail about the standards by which we are subjectively judging another man. It is one thing to deal with the openended requirement that a Senator advise and consent to a nomination.

It is another thing to have specific statutes and language which sound like they really set out some real solid rules and guidelines, but, in my view, some of them are dangerous, because they are written in such a way that if you have a mildly unethical person in your position, that not only could you—I worry less frankly about your excusing someone's conduct, than taking totally innocent conduct, and ruining someone's reputation and standing, and their job. For example——

Mr. **Martin**. It is the toughest job in the world to judge people and subjectively, and I speak frequently, Senator—I do not mean to interrupt you but I want to agree——

Senator **Biden**. Go ahead

Mr. **Martin** [continuing]. With you there 100 percent. Because I speak to a lot of groups, and they say, "What is the toughest part of your job?" And I say, "Well, these, these really difficult, incredibly subjective statutes. I have to judge people's conduct based on them, and I tell you, I do not want to err on one side, and I do not want to err on the other side." But it is a very, very difficult job, to do that. Sorry to interrupt your train of thought.

Senator **Biden**. No. I—this is more a——

Senator **Heflin**. Would the Senator yield?

Senator **Biden**. Sure I will.

Senator **Heflin**. This matter causes me concern, and I want to inquire about the words "appearance of impropriety," or the "appearance of a conflict of interest." From a theoretical basis, in a political world, any favor that is given to an individual, who in turn gives a favor to the one who gave it to him, can create an appearance. The difficulty is in separating what may be bad from good. It involves, in my judgment, a theoretical question of theory, of whether ethical conduct should be the rule of man, or should be the rule of law, and whether or not in writing the law, it should be specific rather than general. We in Congress are faced with a situation where an appearance of an impropriety can occur when a campaign contribution is made, and some time later on, a vote is made that is favorable toward that individual.

This is an issue that I believe deserves a lot of attention. People have recommended ethical standards which go beyond pecuniary interest, but would in effect determine whether or not we can represent minorities. There was a proposal that an ethical conduct be adopted by the Senate saying that you should never thwart the will of the majority and that you should never engage in a filibuster.

You can get into a world of theory, but in the political world, and particularly regarding the two-party system that we have, it becomes pretty difficult under the language of appearances, to take politics out of politics. I think that this is something that deserves careful consideration, by legislative bodies, executive bodies and government bodies.

The question of appearance really is a subjective matter and it brings about the rule of man. The eyes of the beholder, whatever motivates that beholder to do it, rather than the specificity of a law as to whether or not a conflict or a violation occurs. And it is, it is——

Senator BIDEN. If the Senator would yield, it appears to me my time is almost up and I would like to——

Senator HEFLIN. They will let you take mine.

Senator BIDEN [continuing]. Because I do not disagree with the track the Senator is going on. Let me be more specific, which I was leading to. Let us assume, for example, one of the tentative conclusions reached in the staff report, relative to the Thomas-Meese relationship, was that, "On examination of activities, it reveals no violation of the standard of conduct in the Executive Office," and then you go on to say, "Mr. Meese has created the appearance of giving preferential treatment and losing complete independence of action."

Now I am not arguing whether you change your mind, did not change your mind. What would happen? The way you all operate so far, the way it has been, let us assume that it was clear that there was favor given, that there was an indebtedness, and that Mr. Meese—which he did not—I am not saying these were the facts—but that Joe Biden recommended that John Doe—to whom I owed money—get a job.

What would happen if I said at that meeting, and I was in charge of it, I was one of the people that could follow through on that recommendation—if I had said, "By the way, I want you to know John Doe owes me—I owe John Doe a lot of money, but I still think John Doe is awful damn good and should have this job"? "But it is up to you all, what you think." Now, do I still—would I, in that fact situation, transgress the appearance?

Mr. MARTIN. A good question. I do not know, but I will say this about it. It certainly would be preferable to do that, rather than to not. The more facts you have out—and you see, the standards of conduct and all the rules here are designed to protect the integrity of the decisionmaking processes of the Government. So the more you know about those decisions, I suppose—and that is why you have me here—I suppose the more integrity, or at least the appearance of integrity those decisions will have. So I——

Senator BIDEN. See, I understand—and I think it may be worth getting on the record—why we have the rules we have. We would rather err on the side of protecting the integrity of the institutions than we would on the side of giving leeway to the person who may or may not abuse those institutions. I think maybe—I am not sure we have gone too far—I do not think we have gone too far in our intent. I am not sure we have accomplished legislatively what we intended, and it seems to me that I can look through here, and if you go through--if you want to conclude that Mr. Meese violated the appearance of propriety or impropriety, and created the appearance of a conflict. I think you could make that case. If you start off with a mindset, that that is what you want to do.

On the other hand, if you start out with the mindset of saying basically you believe the guy and I want to conclude that he is not—that he has not created the appearance, I think you can make that case, too.

And so that is my dilemma throughout this and that is why I am trying to get to something more objective. Does the enunciation and delineation of the interest one might have, or the relationship one might have with the party with whom you are creating the appearance of impropriety—does the more that the ethics office knows about the disclosure of that relationship by the principle—does that diminish the prospect that there has been the appearance of impropriety or is that not relevant? And again back to the case: I say I clearly have an interest but I disclosed the interest. I disclose out front the interest.

I have an interest in that person but I still think they're good. Should we be trying to eliminate that kind of input by a person who gives or offers or decides on Federal jobs? Is it the actual relationship that is at stake here that causes the problem or is it what in fact is beneath all this concern the idea that one is profitting from the relationship?

Do you understand what I am trying to say?

Mr. **Martin**. Yes, I do, Senator. I think that it is a little bit of both. I think that you want to prohibit or you want to try to avoid people profiting from their public service and that is the basic thrust of some of these regulations. But, you know, the regulations say, look, do not even have a hint of an appearance problem, too.

So you have to say the more you know about a relationship, I think probably the less of an appearance you have, but I do not know if I have an answer for you. I do have this——

Senator **Biden**. Well, let me ask your two colleagues, then.

When you made your tentative conclusion on page 1, I guess it is, of your report—well, anyway, the page that starts "A. Thomas loan and Federal appointments." At the bottom of that page you said in your initial memoranda—and I will end with this, Mr. Chairman, I will not go beyond this.

> Our examination of Mr. Meese's activities reveals no violation of the standard of conduct of the Executive Office of the President which applied to Meese as counselor to the President or Executive Order 11222, section

And then you cite a section and Executive order and you cite it again—

> Require Federal employees to avoid any action which might result in or create the appearance of giving preferential treatment to any person or losing complete independence or partiality by accepting financial assistance from Mr. Thomas and thereafter offering him a White House position. Mr. Meese has created an appearance of giving preferential treatment and of losing complete independence of action.

Now, at the time you wrote that—this is a hard question. I am asking you to go back. But at the time you wrote that, had the fact situation been that Mr. Meese had accepted financial assistance from Thomas, thereafter offered him a job in the White House, but had disclosed to everyone that he had done that; do you think you would have even written your tentative conclusion at that time?

Would you have then gone on and said and this action—let us say if it read this way:

> By accepting financial assistance from Mr. Thomas and thereafter offering him a White House position, notwithstanding the fact that he told everyone of the relationship, Mr. Meese nonetheless has created the appearance of giving preferential treatment and of losing complete independence of action.

Could you have—would you have written it that way or would you have said the other, "because he disclosed it, he has dispelled the appearance of"? This is not an idle thing as far as I am concerned.

Mr. DAVIS. It is not with us either, Senator. And this particular assignment was very difficult. We knew the sensitivity involved and I would like to go back and try to trace my thought process with the experience that I had in the office.

First of all, I think I would start with the basic assumption that Mr. Meese had a very important staffing function and that that staffing function should have been completed, that he should have—that the Government should have the use of his time and his expertise. And to me that is the bottom line. That is where I start.

He should make these decisions. That is what he was put there for. When I start weighing what happened in the case, I have to start normally with a criminal basis and in that instance we talk about a financial interest and I always weigh the financial interest in terms of the criminal statute, normally 18 U.S.C. 208, which sets forth——

Senator BIDEN. I understand that.

Mr. DAVIS. Right. Now, we did not have that in this case because the independent counsel had done away with that and we only had the facts that were in the report. Therefore, all I was dealing with in my opinion were the regulations and specific violations of the regulations which I did not have at this point. I clearly had a gift exception.

Now, to say——

Senator BIDEN. By gift exception you mean because of the personal relationship.

Mr. DAVIS. Because of the personal relationship.

Now, to take it a step further. Then at that point, if all I had was this gray area you are talking about—and it certainly is a gray area—if you have this appearance of impropriety——

Senator BIDEN. Well, that is all you did have at that point in time.

Mr. DAVIS. And that is all we had at that point. Now, should Mr. Meese have recused himself from all of these actions, I guess that is——

Senator BIDEN. I am not asking should he. I am just asking you—I want to understand——

Mr. DAVIS. No; I understand what you are saying, but I think this is part of my thought process. When I say should he, should he recuse himself, no, I do not think so.

Should he have put something on the record to reveal his interest? That is where we get down to the area that this is not a financial interest. I think it is a personal interest. It is a personal matter. And the area is muddy. It is cloudy.

Senator BIDEN. Why did you write it the first time this way?

Mr. DAVIS. Because that is the problem with a staff paper. We tried to surface in our opinion everything that needed to be talked about. And we did. We had——

Senator BIDEN. Well, you have a written conclusion. You do not have "just talked about."

Mr. DAVIS. That is the problem with a staff paper. Believe me, if I knew that I was going to be scrutinized on this by way of the press, and so on, I may have chosen another route.

Senator BIDEN. OK. Let me put it another way. Let us assume that it was—you were just raising issues. OK. I accept that. Would you even have raised it as an issue had the Stein report said, "Meese accepted financial assistance from Thomas; thereafter offered Thomas a White House position; but made clear to everyone in the White House that he had a financial arrangement with Thomas." Would you even have surfaced it then?

Mr. DAVIS. Not if you add the fact in they were close personal friends and had such transactions in the past prior to Federal service, I would not raise it.

Senator BIDEN. Right. And that is important to me because if you said you would, then I am really worried about the statute because I do not know what the hell anybody does and except then say what some are going to suggest here today, I suspect later, is that if you have a personal relationship, any financial relationship, any favor, financial or otherwise, granted with an individual who you had a relationship before you entered government, if you in any way deal with that person thereafter as it relates to your job in government, you are, de facto, creating the appearance of. And that is where I am afraid this is all going.

And I want to make sure you did not go that way.

Mr. DAVIS. No, sir. I do not think government would work if we did that.

Mr. MARTIN. Let me say, Your Honor, Senator, that is why judgment calls are—and people with judgment are so essential in the office that we represent.

Senator BIDEN. You still worry me, though, I mean, not you——

Mr. MARTIN. Well, it is subject to abuse and you could abuse the office if you were not careful.

Senator BIDEN. I am not suggesting you abuse it; I am just suggesting that I know we have to have this—we have to attempt to write legislation and Executive orders that in fact set out guidelines, if you will, or a route by which people should go in order to diminish the prospects that the people's trust will be violated or taken advantage of. I understand that.

But what I am arriving at more and more, not just in this hearing but the last 3 or 4 years; I used to think that former Senator Baker and others were wrong when they talked about disclosure being the answer. I am coming more and more to the conclusion that because it is so subjective and because the danger of ruining someone's reputation is so great from innocent actions because they are not totally sensitized, that maybe the way we should write the law—and I will end with this—is to say that the one thing we are going to nail you on is if you do not disclose everything.

After that, let the people make the judgment. Let it then become a political question that the people decide on. Let Democrats, if they want to go after Ed Meese, say, even though Ed Meese disclosed it, it is still bad, but not have anybody sitting up there in a quasi-official or official role saying Ed Meese violated a standard.

Do you understand what I am saying? I am coming more and more to that conclusion that maybe the safest haven for the Joe Bidens and the Ed Meeses and maybe everybody else here does not worry about it; I worry about it—is in the hands of the public and that the only thing you, in an editorial sense, should be ruling on is did we disclose completely.

If the imaginery Senator from Oshkosh wants to accept a contribution from a convicted felon, fine, as long as he discloses that, puts it out in writing for all the press and all the world to see and let the public judge whether or not.

But I realize I would rather write a prescription. You could not do that. But, then, how do you write that proscription? And it gets so narrow that when we get down to appearance, I wonder what I have done. You know, unlike Sam Irvin, the statute of limitations has not passed on everything I have done. Remember his famous comment? I can sit in this committee because anything I have done wrong, I am so old the statute of limitations has passed by now.

You know, I am not that old. But, at any rate, it is something I would like to, after the entire nomination and this process is concluded, I really think it is something the appropriate committee should look at because it just skirts the ragged edge here, no matter—and I believe you are well intended people.

Anyway, I do not have any more to say. Thank you for letting me go over the time. The only reason I am leaving is I have to go up to Foreign Relations for Secretary Shultz and I will be right back.

The CHAIRMAN. Do you have more questions?

Senator BIDEN. No, but for the next panel I will, but not for this panel.

The CHAIRMAN. The distinguished Senator from Nevada, Mr. Laxalt.

Senator LAXALT. I thank the chairman. I think that you people probably have the most unenviable task in all of government, and that is trying to be the conscience of the Federal Government in arriving at these difficult judgments which you describe.

Let us talk about process for a little while. As I understand the documents that have been submitted to us, the scope of your inquiry was pretty much fashioned by the Stein report; is that correct?

Mr. MARTIN. That is correct, Senator. I asked them to examine that and also in the context of what Common Cause has put out. I said, look at that, too. Make sure that there is nothing——

Senator LAXALT. So, your review examined both the Independent Council's report and the Common Cause press release?

Mr. MARTIN. That is correct.

Senator LAXALT. You requested that your staff assistants make a full and complete inquiry into all of the allegations and inferences that could possibly be drawn from both of those documents. Is that true?

Mr. MARTIN. That is correct.

Senator LAXALT. How long did the process take?

Mr. MARTIN. You know, we started, I think it was sometime before mid-December and we were still going at it into January. So it was——

Senator LAXALT. So you took several weeks.

Mr. MARTIN. Yes.

Senator LAXALT. Tell me, during the time that you were engaged in your various deliberations, was there any interference by Mr. Meese, his agents, his attorneys or by anyone in the Federal Government?

Mr. MARTIN. Absolutely not. The only people involved in the process were Mr. Campbell, Ms. Feathers, Mr. Davis, and me.

Senator LAXALT. And the other members of the panel agree to that?

Mr. DAVIS. That is correct, Senator.

Senator LAXALT. And eventually then, you had a staff working paper which, as you have described, raised the possibility of an "appearance problem."

Mr. MARTIN. Well, it raised three problems, the document that Mr. Davis and Ms. Feathers gave to me. One was an appearance problem with Mr. Barrack's appointment, an appearance problem with Mr. McKean's appointment, and a gift problem involving forebearance of some interest; in other words, if you forebear on interest, is there a gift and we pretty much together reached the conclusion that that was not a problem.

Senator LAXALT. But those were merely flags at that point, were they not? These were points thought to merit further consideration and study?

Mr. MARTIN. That is correct.

Senator LAXALT. These were not any determinations or conclusions. These were areas of concern which were to be probed further.

Mr. MARTIN. That is how I wrote it.

Senator LAXALT. Well, that is normally your process, I would hope.

Mr. MARTIN. Yes, it is.

Mr. DAVIS. I wrote it, Senator, and that was my notion of what I was doing.

Senator LAXALT. So then you made a call to Fred Fielding, Counsel to the President, which as you described before was normal procedure.

Mr. MARTIN. That is correct

Senator LAXALT. Each of the agencies of the Government has a designated person for you to call when these problems arise; you can call that person and raise the particular problem. And that is what you did, is that right?

Mr. MARTIN. That is what I did.

Senator LAXALT. So there was nothing untoward in this phone call to the designated ethics officer. That was normal procedure.

Mr. MARTIN. Normal procedure.

Senator LAXALT. And then Mr. Fielding suggested that possibly Mr. Meese's counsel should be heard?

Mr. MARTIN. He said would you be willing to hear them and I said I certainly would.

Senator LAXALT. Well, is there anything untoward about that suggestion?

Mr. MARTIN. I have done it many times with—I mean if the individual wants to come over—I mean, if Mr. Meese had said I want to come over, I might have said, look, but because it is kind of sensitive. But I certainly would have heard him.

But normally they either send a lawyer or the person will come themselves and say I want you to hear my side.

Senator LAXALT. And that, I would think, would be simple, elementary due process.

Mr. MARTIN. Well, it is my standard practice.

Senator LAXALT. Well, it would be anybody's standard practice sitting in a quasi-judicial position as you all were. Let counsel be heard.

Mr. MARTIN. I would think so.

Senator LAXALT. And you permitted that.

Mr. MARTIN. I would have thought anything else would be unfair.

Senator LAXALT. So Mr. Garment, and perhaps other counsel, then made a presentation to you?

Mr. MARTIN. Well, they did not really make a—let me explain what happened. They came over and wanted to know what the conclusions were, what the preliminary conclusions were and I told them and they left.

Senator LAXALT. Was there any hearing or was this just a discussion? Did they submit any memoranda or legal points to you?

Mr. MARTIN. They did later submit a memorandum which I gave to Ms. Feathers and Mr. Davis.

Senator LAXALT. And that is normal practice?

Mr. MARTIN. Sure.

Senator LAXALT. Now, as a result of all this and as a result of the staff discussions between all of you, you came to the conclusion, as you have all testified here, that there was no merit to the potential appearance problem. Is that correct?

Mr. MARTIN. Let me put it this way: Our conclusion after all this was that there existed an appearance problem in regards to the McKean matter, that I required and I wanted them to probe a little further and get some facts and examine it a little hard to see if in fact there was anything to the appearance.

Senator LAXALT. And by the end of the process?

Mr. MARTIN. Oh, by the end, no, I had determined that——

Senator LAXALT. You gave him a clean bill of health. That is what we are talking about; is that not right?

Mr. MARTIN. That is correct.

Senator LAXALT. At the outset of your inquiry, a government employee is presumed to be ethical?

Mr. MARTIN. That is correct.

Senator LAXALT. That is the same basic standard employed with some criminal out there; he is presumed to be innocent until proven guilty, and that applies to a government official as well as to anybody else?

Mr. MARTIN. That is correct.

Senator LAXALT. So, within those general parameters you had your discussion, you conducted your inquiry, and you finally made a call; correct?

Mr. MARTIN. That is correct.

Senator LAXALT. And you did not make that call on a subjective basis. You did not make your judgment out of the thin air. You made it based on hard, substantive facts, did you not?

Mr. MARTIN. Yes; I did.

Senator LAXALT. Now the staff working paper contained an erroneous assumption that Ed Meese had knowledge of Barrack's financial involvement in the sale of his home, when in fact Mr. Meese had no such knowledge?

Mr. MARTIN. Well, the staff report—we were uncertain. My staff was uncertain. I said, look, I want to know if Meese knew about his financial involvement, Barrack's financial involvement. And that is one point that Mr. Garment did clear up for us.

Senator LAXALT. That was cleared up?

Mr. MARTIN. Yes.

Senator LAXALT. And as to Barrack's employment, that was Jim Watt's call, not Ed Meese's.

Mr. MARTIN. Yes. On the first job? You mean on the Interior job?

Senator LAXALT. Yes.

Mr. MARTIN. Well, that is correct. Mr. Meese had no involvement with the Interior job.

Senator LAXALT. Now, with respect to the facts that eventually led to the McKean conclusion, in your report you indicated, in support of the Stein finding, that at the time the loans were made there was no evidence that Mr. McKean was interested in or even contemplated receiving a Federal position. A finding of fact?

Mr. MARTIN. Correct.

Senator LAXALT. Supporting the Stein conclusion.

Mr. MARTIN. Correct.

Senator LAXALT. Both loans were arm's length transactions at higher than prevailing bank rate interest. That is a finding of fact, hard fact.

Mr. MARTIN. Correct.

Senator LAXALT. Consideration of Mr. McKean's name was initiated by Mr. Deaver. It was not raised by Ed Meese. Finding of fact.

Mr. MARTIN. Correct.

Senator LAXALT. Mr. Deaver initiated the nomination of Mr. McKean for a longer term on the board, at which time the appointment process was already in motion. Finding of fact.

Mr. MARTIN. Correct.

Senator LAXALT. By both Stein and your people upon fuller inquiry.

Mr. MARTIN. Correct.

Senator LAXALT. And the independent counsel's report found no evidence that Mr. Meese spoke to anyone or took any action to assist Mr. McKean in obtaining a longer term. Finding of fact.

So essentially what has happened here is that, as the law required, you conducted a full and complete inquiry without any interference from Ed Meese, or from any Federal official. You finally arrived at the bottom line conclusion that Mr. Meese's conduct in these various matters provided no basis for any charge of unethical conduct.

And after all that was done, you ended up giving Ed Meese a clean bill of health.

Mr. **Martin**. That is correct.

Senator **Laxalt**. I think those are all the questions that I have, Mr. Chairman.

The Chairman. Thank you. The distinguished Senator from Ohio.

Senator **Metzenbaum**. Mr. Martin, Mr. Davis, Ms. Feathers, I first would like to say that I commend you. I think that you are decent public servants and I think that you, Mr. Martin, were very sensitive to the whole issue of appearances. I thought your opening statement touching upon that whole question of appearances was an appropriate one and I commend you for doing so.

Mr. Davis and Ms. Feathers, I commend all of you for trying to do a difficult job under very difficult circumstances with respect to the appointment of a man to very high office in government whom we know to be very close to the President of the United States and that places a great responsibility on your shoulders.

And I think that you have tried to do and are trying to do the job that should be done. I would like to ask you one question, Mr. Martin, first.

In your first letter to Senator Thurmond you said that, "I concluded and my staff agreed that no conflicts of interest existed and that only one of the allegations rose to the level of a violation of the standard of conduct."

In your second letter is it just an oversight that you failed to include the language "and my staff agreed"? That is not in the second letter.

Mr. **Martin**. That is correct.

Senator **Metzenbaum**. Was there some reason for that?

Mr. **Martin**. Well, no reason for it except that you are talking about a label, as I explained in my opening statement. In the office we like to refer to an appearance problem rather than a violation. They referred to a violation in their underlying paper and I did not want to get into a dispute that, you know, it is a label. If you want to call it a violation of an appearance standard, fine, you can.

I do not call it that. I call it an appearance problem, but that is the only difference.

Senator **Metzenbaum**. I guess what I am really asking, Mr. Davis, Ms. Feathers, is there any area of reservation you had with respect to Mr. Martin's ultimate conclusions or did you agree 100 percent? Did you have some reservations? I know you already said, Mr. Davis, that you had reservations because you were saying that you believed Mr. Meese violated the appearance standard, but there was the corrective action of counseling. I am not quite sure how, if there is a violation, how the corrective action of counseling clarifies that or makes it better.

Is there some reservation in that connection on your part?

Mr. **Davis**. No, sir. Senator, I have no reservations on what was done. Again, we raised those issues we felt were applicable. We had several meetings in which we discussed the basic paper, the facts of the report. Throughout this procedure it was just a give and take. Certainly there were no threats; we were not coerced. There were no inducements offered. This is a typical way that we handle a case because of the difficult nature of the subject matter.

And when it was finally resolved I concluded in my own mind that that was the proper resolution, and I was satisfied with the process.

Senator **Metzenbaum**. Well, I am not quite clear on this. I had the responsibility of Mr. Fielding's office and calls for violations or potential violations or appearance thereof and such action as he is to take in connection therewith.

But I am not quite clear what you were saying to the committee when you said that you did have some reservation in connection with Senator Biden's questions and that is that Mr. Meese had violated the appearance standard but that there was this corrective action of counseling.

Now, A, what counseling, if any, do you know about that took place, and, B, if there's a violation how can the counseling clear that up and what does that mean? I am not sure what that means to us.

Mr. **Davis**. It is very difficult, just as Senator Biden had indicated. I think when you start dealing with an appearance problem—and perhaps the other members of my staff or Mr. Martin's staff or Mr. Martin will not agree with my approach, but I think that there are degrees of appearances and in this particular case I was completely satisfied in my own mind that based on the facts that we had, that there was not any violation.

I also felt that there was an overall pattern in both McKean loans that was such that even though there was not any violation and that these activities may have been innocent or inadvertent, that Mr. Meese should be a little more sensitive when a pattern like that develops in the future.

And all I was interested in was assuring myself that Mr. Fielding and his staff, counsel to the President, were aware that we were concerned in this area because they have always done an excellent job.

My decision was not reached in a vacuum, Senator. I have almost daily contact with that staff and I felt that the mere fact that we had a concern that was brought to the attention of Mr. Fielding and his staff, that that was all that was necessary on the part of the director and I think ultimately that is what happened and that is what I was looking for.

Senator **Metzenbaum**. So, as I understand it, you are saying that in your opinion you did feel there was a violation—I do not want to put words in your mouth—but I think I understand you to say that you felt that by bringing it to the attention of Mr. Fielding, that it would be sufficient that Mr. Fielding would take such action, if any, that was necessary and that you had confidence that their office had always been sensitive to the whole question of ethical propriety.

Mr. **Davis**. I would agree with that but if you characterize it as a violation that has a stronger connotation than the terms that we are talking and I am kind of sensitive of because of the basis paper.

I would like to say you could characterize it as a violation, a technical violation. I do not.

I was not thinking in terms of a technical violation. I was thinking in terms of we think there is a problem. We want to correct it and it was corrected. Now, because we are dealing with such an esoteric area as appearances of impropriety, I do not know that I want to refer to it as a violation as such. It was an area of concern; I think maybe that is the way to characterize it.

Senator METZENBAUM. Let me just read you what you wrote. I might say, in connection with that letter that you wrote to Mr. Martin, nowhere does it mention it as a draft paper or a working memorandum or working paper. It is called a memorandum and it arrives at conclusions and in it you state on this question of violations:

> With respect to the loan Mr. Meese received from his accountant, Mr. McKean, our examination reveals three ethics violations. Mr. Meese should not have participated when Mr. McKean came before the staff twice for approval with respect to positions on the Postal Board of Governors. He had a financial interest in the matter and under the regulations applicable to the Executive Office of the President, 3 CFR 100-735-8, would be required to abstain from participating in the matter.

Now, what were the essential facts that led to that conclusion?

Mr. DAVIS. Basically, Senator, I started—and I think I probably misconstrued a fact and maybe that is what—let us start with what I did wrong because I think—that is why I do not like the airing of a staff paper. I think that initially in the opening discussions that we had on this matter, that I raised an issue that appeared in a footnote in the independent counsel's report.

I was concerned that Mr. McKean had control of the loans because there is a footnote that indicated that in December 1981 Mr. Meese had tendered an interest payment and that Mr. McKean had returned that interest payment, and that bothered me. And my initial reaction was, well, then he has control of the loan.

In our subsequent discussions on this point, I realized for perhaps the first time—I may have misconstrued the dates—that the interest was not due on the loan until the following July, and quite frankly the Chief Counsel, Mr. Campbell, in our office and I talked about it and he said, have you weighed this part of the facts. And in thinking about them I said, quite frankly I misinterpreted. I had my dates confused as to when the interest was due. That was the factor that influenced my decision. And so what I am saying, Senator, is that when I wrote this, after we looked at the different interpretations that could be given to the facts in the case, I was satisfied that our process culled out any problems that I had except for the one that we have talked about, the appearance problem.

Senator METZENBAUM. Now then, what facts led you to change your conclusion, the conclusion that there had been three ethical violations? What new facts were brought to your attention and what new clarification was brought to your attention?

Mr. DAVIS. First of all, it was that particular item that I talked to you about, the footnote. That was an item. The whole character of the nature of the loan and the trust status of Mr. McKean as opposed to Mr. McKean actually being in control of the loan or having the investment pool money——

Senator METZENBAUM. Let me just ask you a question. Mr. McKean negotiates the terms. He provides for the deferral of interest on two separate occasions. He is the only person with whom Mr. Meese deals. Does the fact that it is his money or his office's money or some client's money, in your opinion, does that make any difference? And at one point Mr. Meese did not even know whose money it was; first he thought it was Mr. McKean's and then he indicated he thought it was the office's money and then he later learned that it was some client's money.

But is that the nub of the matter? Is not the nub of the matter whether or not Mr. Meese had arranged a loan on favorable terms from a man by the name of McKean and Mr. McKean handled all of the details and that Mr. Meese was then involved in connection with Mr. McKean getting a job in the first instance in the Federal Government and then second involved in connection with his getting a 9-year term at a later date.

Does it matter whose money it was at that point? Is that not Tweedle-Dee, Tweedle-Dum?

Mr. DAVIS. It is not, Senator, when we are talking, when we start using the term violation, and conflicts of interest violation, then we are talking technical, rather, areas that we had not worked in before, and I thought—I think we had to be very careful. It was not, it was not when you take the overall pattern, and we are talking appearances, I think we certainly did consider that. We took that in consideration, in our final findings in the area. But when you are talking violations, I think you have to be very careful, and we try to be.

Senator METZENBAUM. Now you also state on page 2 of your cover letter, that:

> Mr. Meese violated the agency gift standards by accepting Mr. McKean's forbearance on the interest due on the loan. Such forbearance is considered a gift in the definition found in Section 209.3 of the Ethics in Government Act.

Now, would you state what facts led you to this conclusion, and then what facts led you to change that original conclusion.

Mr. DAVIS. Yes, sir. I think—I am going back to the same point. I think you start with the basic proposition that, the transferer of an—some economic value, if it is discretionary on the part of that transferer, I think we would have a problem. Here, I assume that that person was Mr. McKean, because of the footnote. It influenced me greatly in this case

On reflection, looking at the facts, and after discussing this thing, I came to the conclusion that Mr. Kupperberg—and I am sorry if I mispronounce his name—but the partner had control of that investment fund, and not Mr. McKean.

Senator METZENBAUM. Now how did you arrive at that conclusion since—to the best of my knowledge, Mr. Kupperberg was never involved in any meetings. I do not know if Mr. Meese ever even knew his name, and when there was a deferral of interest, when there was a deferral with respect to payment, when there was additional money needed, when there was a meeting set up to discuss the loan terms, and interest due in connection with it, as well as the reappointment for 9 years to the Board—in no single instance do I know of, or to the best of my recollection, was anybody else present.

There are a number of names that are associated with Mr. McKean. But to the best of my knowledge and recollection, Mr. Meese never dealt with anybody except Mr. McKean, and he had Mr. McKean change the terms to defer interest for more than a year.

There is no evidence that he had to go to the telephone and call Mr. Kupperberg, or to call anybody else. Every scintilla of evidence in this matter indicates that Mr. McKean and Mr. Meese were the only people involved in negotiating the terms, and that Mr. McKean spoke for, acted for, and was the ultimate authority with respect to the loan.

So, who was behind Mr. McKean, it seems to me as I said before, is Tweedle-Dee, Tweedle-Dum. It does not matter whether it was his money, somebody else's money. The fact is, Mr. Meese was dealing with Mr. McKean, and it was Mr. McKean who was coming up for appointment, for a job, and then a renewal of that job. And that is what is concerning me, as to how you came to that conclusion, and then changed your conclusion.

Mr. DAVIS. I guess we just disagree on the facts, Senator, because——

Senator METZENBAUM. Well, tell me because I do not mean to—then if I am wrong, I am——

Mr. DAVIS. Well, it is not a question of you and I being wrong, because this is a process that we went over. I think it is, it is a question of what did the independent counsel's report say, and based on, based on several meetings after this initial document, I concluded, in my own mind, that the facts in the independent counsel's report stood for the proposition that somebody else had that investment pool money. That is exactly where I came out. It was—the money, the money was, was under the charge of Mr. Kupperberg, and he called the shots as to what kind of interest he wanted his clients to make, where the money came from, and perhaps you disagree with those findings, but that is the, that is the basis of the action that I took in this case, and that is all I can tell you.

Senator METZENBAUM. Let me ask you, did you, or anybody with the Office of Government Ethics, call in Mr. Stein or any of his staff in connection with this matter, or did you check with anyone else besides Mr. Fielding, and then talk with Mr. Garment?

Mr. DAVIS. No, sir, Senator, we did not. We, we based our analysis on the report, on the Common Cause report, and on our, the files that we had available, which were the public disclosure files. Our staff just is not large enough. This was just one of several projects I had going during this period of time, Senator.

Senator METZENBAUM. Well, I am having some trouble with this Kupperberg matter, and the report, because on page 146, the report says:

> Nonetheless, it could be concluded, and we assumed, arguendo, for purposes of our analysis, that Mr. McKean afforded the Meeses something of value by arranging for them quickly, and on an informal basis, an unsecured $40,000 loan, later increased to $60,000, with no interest payable for at least a year, particularly inasmuch at a later time, interest payments were waived for over 14 months.

Now, I may have missed the point about Mr. Kupperberg really doing something about it, but as I see it, that would seem to indicate that it was Mr. McKean who had done this, and that was the assumption of the Stein Committee.

Senator **Hatch**. Howard, would you yield? I think I might be able to help you right out of the record.

Senator **Metzenbaum**. Surely.

Senator **Hatch**. On page 131, right at the top of the page. If you have a copy of that, you may want to follow it as well. About the second sentence down, it reads:

> Mr. McKean recalled Mr. Kupperberg saying to him that the interest could wait, because 'The lender does not want the money in 1982.'' Mr. Kupperberg recalled saying to Mr. McKean, that he would be willing to defer interest payments if Mr. Meese could not pay until 1983.

That might lend a little bit of weight——

Mr. **Davis**. Thank you, Senator.

Senator **Hatch**. Certainly.

Mr. **Davis**. That is one of the, that is one of the facts that I was referring to.

Senator **Metzenbaum**. Can I just read that for a moment, please?

The **Chairman**. Senator, you have about 1 minute.

Senator **Metzenbaum**. Well, I guess the point that concerns me is, that when they first met, when Mr. McKean made the loan, they agreed that the loan would be for at least 1 year, at an interest rate of 21 percent for the first 3 months, and then the other details of the loan. At that point Mr. Kupperberg is not involved at all, and this only has to do with respect to whether Mr. Kupperberg needs the money or not at a later point.

But when the initial loan is being negotiated, it is all with Mr. McKean, and when the deferral is arranged for, it is all with Mr. McKean.

Senator **Hatch**. I do not think you can assume that, Howard. I do not see what leads you to make that assumption.

Senator **Metzenbaum**. Because it says so. That is what the report says.

Senator **Hatch**. I do not think it says that.

Senator **Metzenbaum**. That "arguendo," that it was Mr. McKean that——

Senator **Hatch**. Well, you are arguing that that may—you are making that assumption.

Senator **Metzenbaum**. No. I am not arguing that. I am reading to you from the Stein report. That is not my phraseology. I gather that my time is up. I will have some additional questions, but I appreciate your cooperation very much.

Mr. **Davis**. Thank you, Senator.

The **Chairman**. Senator, I believe your time is up. On page 130 of the Chief Counsel's report, it is quoted:

> Mr. Kupperberg had occasionally asked Mr. McKean how things were going with the Meese loan, but had not pressed for repayment. In the fall of 1982, after the house was sold, Mr. McKean told Mr. Kupperberg not to worry because Mr. Meese had other property which was more than adequate to secure the loan. Mr. McKean told Mr. Kupperberg that he was going to meet with Mr. Meese and discuss the loan with him. If Mr. Meese could not afford to pay the loan off, then Mr. McKean intended to press forward to secure the loan with a second deed of trust on the Meese's Virginia house.

I believe Senator Hatch has already quoted that amply.

Senator **Hatch**. Thank you, Mr. Chairman.

The **Chairman**. So it appears that Kupperberg was in charge of the loan.

Senator **Metzenbaum**. Well, Mr. Chairman——

The **Chairman**. Well, that is a conclusion. You draw your opinion, and the rest of us will draw ours.

Senator **Metzenbaum**. Well, I know, but I would just like to suggest, Mr. Chairman, that you have had your time, and I think we ought to allocate time to each other, and without making——

The **Chairman**. Well, I let you run over.

The distinguished Senator from Maryland, Mr. Mathias.

Mr. **Martin**. May I make a point on that? On page 113 of the report, Mr. McKean made it clear the money was not coming from him personally.

Senator **Metzenbaum**. When was that?

Mr. **Martin**. At page 113.

Senator **Metzenbaum**. No. I mean, at what point in the negotiations was that? That was later, was it not?

Mr. **Martin**. I am not sure.

Senator **Metzenbaum**. I think it was at a later point, but I am not certain.

Mr **Martin**. I think it was at the time of the original meeting, I am informed by my——

The **Chairman**. The distinguished Senator from Maryland, Mr. Mathias.

Senator **Mathias**. Mr. Martin, if there is such a thing as an expert in the application of the standards of conflict of interest, and standards of conduct, you are it.

Mr. **Martin**. Unfortunately.

Senator **Mathias**. And you also are familiar with the facts in the McKean episode. I address this question to you, but also, to your associates. What should have been done differently?

Mr. **Martin**. Are you talking about on 20-20 hindsight, me sitting here, or, are you talking about at the time?

Senator **Mathias**. Well, you are the head of the Office of Government Ethics. What we are talking about here is, is not what we can do to change history, because history cannot be changed. But we are talking about providing guidance for those thousands of Government employees, who, as you yourself have said this morning, may be faced with situations which present problems for them. What should be done in a case like the McKean case? What we are dealing with here—I think it ought to be perfectly clear—is not just a confirmation hearing on the nomination of Mr. Meese. We are dealing with precedents which will be important for Government employees for years to come. So, I think it is important to nail down exactly what the standards require.

Mr. **Martin**. Well, in a—I read to you in my opening remarks, that the standards regarding appearances as aspirational in nature. All of us in the public sector are under that gun, and I think Senator Hatch——

Senator **Mathias**. We are aware of that.

Mr. **Martin** [continuing]. Senator Hatch, in his opening statement, when these hearings started, presented, I think, a more problematical problem for you Senators, when you take PAC money, or a contribution, and then you go vote—much more problematical than, than what I think Mr. Meese was confronted with. But it seems to me that, that the aspiration is you want to avoid appearances of conflict, and if, if you had 20-20——

Senator MATHIAS. But what should have been done in the McKean case? That is the question.

Mr. MARTIN. Well, obviously you are referring to a recusal situation, I think, Senator, and in a, in a—by hindsight, and 20-20 vision now, and knowing all the facts as I do, I suppose that if Mr. Meese wanted to absolutely assure the world, he would have said, "I do not want to sit in on this approval", even though the approval—and I am not talking about the first one, I am talking about when he went up for the second, which to me was the problem. I was not so concerned about the first time, because at that time Mr. McKean had no idea he was interested in a Federal job when the loan was arranged. But the second time, I think, that—when he went up for a full, full term on board, that with 20-20 hindsight, and with perfect vision as I now have, I suppose had I been sitting with Mr. Meese, I would have counseled him, "I would leave this meeting, to avoid an appearance. Even though you're totally ethical and totally honest, and I believe your judgment would not be impaired, or biased, for appearance's sake, maybe you should not be here."

Senator MATHIAS. But we are talking about John Doe or Mary Doe who is in some policymaking position of the Federal Government, who gets a letter that says, "I am coming to see you and I want to talk about, No. 1, X matter of public policy, and, No. 2, your home loan." Now what would you say? What would you say to John Doe or Mary Doe?

Mr. MARTIN. Well, you know, I am going to give you a roundabout answer, Senator, and I am not trying to avoid the—because I will get to it—but in, in——

Senator MATHIAS. Yes, but you have got real people who want to know the answer.

Mr. MARTIN. And I am going to give you the answer. You want it? OK. Let me give you a short answer. If you have a problem, and if a question is raised in your mind, "Go see your ethics counselor." That is what I would tell them.

Senator MATHIAS. That is what it comes down to.

Mr. MARTIN. But what I am saying is——

Senator MATHIAS. All right. Now you are my ethics counselor. What are you telling me? [Laughter.]

Mr. MARTIN. Then—fine. Then the person has at least been aware enough that he should go see his ethics counselor, and I think it takes him off the hook, in terms of, "What should I do?" If somebody comes to me, and said, "I took a, I took a $10,000 vacation, and on advice of counsel it was proper for me to do it", you know, it is pretty hard to say, "OK. You have done something wrong." At least you are aware enough that you should, you should question it, and that is—and what I was going to say——

Senator MATHIAS. You tell that to the IRS, that you did it on advice of counsel. [Laughter.]

Mr. MARTIN. Well, our training programs emphasize that. I do not have enough of a staff to do all the training I think I would like to do, but our training programs emphasize that, especially to people in policymaking decisions. If any question arises, if there is any hint that there might be an impropriety, do not wind up in the newspapers, go ask your ethics counselor, or go ask your general counsel if you have got a problem here.

Senator MATHIAS. Mr. Davis, what would be your answer?

Mr. DAVIS. That is my answer, Senator, and I do not think—I think that is the right answer, and that is all we were trying to accomplish in this case, and that is what we——

Senator MATHIAS. You would not say to the John Doe, or Mary Doe, "You'd better not have that meeting. You'd better let somebody else in the office handle it?"

Mr. DAVIS. I would think—I would hope, that if they had any question in their mind, that they would be sensitive enough to the issue to raise the facts with the ethics official or a deputy, and get a reading, and if the official felt that there was too much of an appearance problem, not have the meeting or perhaps lay the facts on the record, as was suggested earlier.

Senator MATHIAS. Disclosure, which is what we have to resort to here in the Congress, as Senator Hatch has suggested.

Mr. DAVIS. That is—that is a possibility.

Senator MATHIAS. Full disclosure.

Mr. DAVIS. I think in a case where we are not dealing with—again, to go back and reemphasize. If we are dealing with a situation where we have a personal interest as opposed to a financial interest that may run and follow the criminal statute, that works, a full disclosure works, and you could go ahead and perform that staff function.

Senator MATHIAS. Miss Feathers, do you have anything to add on that?

Miss FEATHERS. No. That is the advice I would give.

Senator MATHIAS. So that if John Doe or Mary Doe gets that kind of a letter, then you as the staff of the Office of Government Ethics, would expect that that letter would be taken to the employees ethics adviser, am I right? That is your advice?

Mr. DAVIS. Yes, sir. I would hope that that would be the case, in a complicated situation, a nonreoccurring situation, that you did not know the answer to. Yes, sir.

Senator MATHIAS. And that is what you told us, Mr. Martin?

Mr. MARTIN. That is exactly what I——

Senator MATHIAS. And that is what you told us, Miss Feathers?

Miss FEATHERS. Yes.

Senator MATHIAS. And then the ethics adviser would discuss what further action should be taken?

Mr. MARTIN. They would probably call us.

Senator MATHIAS. And you would suspect, hypothetically, that it would either result in a full disclosure or else assigning the file to some other official? Is that right, Mr. Martin?

Mr. MARTIN. That is correct.

Senator MATHIAS. Mr. Davis?

Mr. DAVIS. It could, with your hypothe—I am not sure. As I said, my basic, my basic premise is that that individual performs that staff function until there is some reason, that I can show that he cannot. So to say that he turns it over to someone else, or discloses, that may be the case, but first of all, I am going to find out if he can do his job, and if he can do his job, I am going to try to give him some reason, or some way of doing his job.

Senator MATHIAS. Right, Miss Feathers?

Miss FEATHERS. Yes. That is right. As often—often, we rely on what the agencies themselves can see, because they might understand the situation that is particular to their agency much better than we would, and we often rely on their judgment in those things.

Senator MATHIAS. Well, that brings me to the next question. Mr. Davis says he wants to be assured that the person can do his job, and that is really the point you reached as far as Mr. Meese is concerned, is it not?

Mr. DAVIS. That is correct, Senator.

Senator MATHIAS. And you established to your own satisfaction that Mr. Meese had not lost his complete independence or impartiality?

Mr. DAVIS. That is correct.

Senator MATHIAS. Now how did you establish that?

Mr. DAVIS. Again, I had to go back and just review the facts in each of these instances that we are talking about here. I think it was a very hard process, but from the facts that were available, I came to the conclusion that he did not violate, he did not engage in a conflict of interest. That what happened here, that he—that he was involved in a pattern of events, that if you took a look at, would, would raise an appearance, that perhaps he was not impartial. And therefore, even though it might have been an innocent act, what I was interested in is sensitizing him to just the procedure that we are talking about. If he had any question in his mind, in the future, to discuss that with his, his people that deal with ethics.

And as I indicated, I was very confident that—that Mr. Fielding and his staff could do this. They have been doing it 4 years. We have watched them, and believe me, I was confident that that staff does a good job, and I think that I want to make that point.

Senator MATHIAS. Thank you very much.

The CHAIRMAN. The distinguished Senator from Arizona, Mr. DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman. Mr. Martin, I have had an opportunity to read your report. I appreciate the struggle you must go through. It certainly brings to mind that your job is indeed very difficult. Let me ask you a little bit about your background. This was not furnished to me. How long have you been the director of the office?

Mr. MARTIN. Since—I think it was June or July of 1983.

Senator DECONCINI. What did you do before that?

Mr. MARTIN. I was a partner in a law firm here in town.

Senator DECONCINI. What firm was that?

Mr. MARTIN. Santarelli & Gimer.

Senator DECONCINI. What kind of law did you practice there?

Mr. MARTIN. Well, I was a—I did criminal and civil trial practice, and a little bit of administrative work.

Senator DECONCINI. Had you served in any administration, or in any government position before?

Mr. MARTIN. Well, yes. I guess you missed my answers to Senator Thurmond's questions.

Senator DECONCINI. Yes.

Mr. MARTIN. Let me again share with you. I was a graduate of George Washington University Law School, and right out of law school, I came up to the Hill, and worked very briefly as a legislative assistant for about 6 months. Then I spent 4 years in the Department of Justice as a prosecutor in the Organized Crime Section in the Strike Force Program.

Senator DECONCINI. Who did you work for here, on the Hill?

Mr. MARTIN. A gentleman named Harvey Machen. He was a Congressman from Maryland, a Democrat.

Senator DECONCINI. Then you worked at the Justice Department for——

Mr. MARTIN. Approximately 4 years.

Senator DECONCINI. Four years?

Mr. MARTIN. Yes.

Senator DECONCINI. What period of time was that, please?

Mr. MARTIN. Probably 1969; maybe to 1973.

Senator DECONCINI. After that you went in to private practice?

Mr. MARTIN. No. I was Chief Counsel at the U.S. Secret Service for 3 years.

Senator DECONCINI. Secret Service?

Mr. MARTIN. Yes, sir.

Senator DECONCINI. Until 1975 or——

Mr. MARTIN. About 70—no, that would run to about—1973. About 1976, I think.

Senator DECONCINI. Then after that?

Mr. MARTIN. And then I started the law—we started a law firm with Mr. Santarelli, Mr. Gimer and two others.

Senator DECONCINI. Thank you. I am sorry I missed that information but the snow kept me from being here this morning. Did you have any particular background in ethics, having either studied it, or written about it, or represented people before your appointment?

Mr. MARTIN. I have to confess, I did not.

Senator DECONCINI. Do you know why you were selected for this job?

Mr. MARTIN. No. I do not.

Senator DECONCINI. Do you know who might have recommended you for the position?

Mr. MARTIN. I am not sure. I know my résumé was in the Office of Personnel at the White House, but——

Senator DECONCINI. How did your résumé get there?

Mr. MARTIN. I guess I sent it over.

Senator DECONCINI. You sent it?

Mr. MARTIN. Yeah.

Senator DECONCINI. You were interested in the position?

Mr. MARTIN. No. I was interested in serving in the Reagan administration. I had—let me explain that. When I was in the Secret Service, I met Mr. Reagan then, when he was campaigning in the 1976 campaign. I had to take a deposition of an agent who was on his candidate detail. And I had the opportunity to watch him that day, and actually to talk to President Reagan for about a half an hour, and I was thoroughly impressed with his vision of America.

And so when he decided to run in 1980, and I was in private practice, I wanted to, I wanted to help, so I——

Senator DECONCINI. Did you participate in his campaign?

Mr. MARTIN. I had a minor, minor role in the campaign in Montgomery County, MD.

Senator DECONCINI. What role was that?

Mr. MARTIN. Well, I was one of about a half a dozen people who planned the county effort in Montgomery County.

Senator DECONCINI. Did you work with Mr. Meese at all in the campaign?

Mr. MARTIN. Oh, I—no, I have never met Mr. Meese.

Senator DECONCINI. You never had met Mr. Meese?

Mr. MARTIN. Well, I may have said hello to him at a, at—on one occasion, but other than that I——

Senator DECONCINI. One occasion before the President was elected?

Mr. MARTIN. No. I never met Mr. Meese——

Senator DECONCINI. Before the President was elected?

Mr. MARTIN. Correct.

Senator DECONCINI. You met him on one occasion after President Reagan's election?

Mr. MARTIN. Once or twice. I may have been in a room where he has spoken. I may have said hello to him, with his lawyers one time, when I ran in to him in a restaurant, I think.

Senator DECONCINI. Before this incident or——

Mr. MARTIN. Yes.

Senator DECONCINI. Before this was brought to your attention? Thank you. As Director of the Office of Government Ethics, what is your relationship with your staff? Let me be specific. Do you hire them? Are they civil servants? Are they political appointees?

Mr. MARTIN. They are civil servants. They were civil servants and they were in place when I arrived. I hired Miss Feathers about 6 months ago Mr Davis had been there 4 years, and I have hired, since I have been there, two other career people. Miss Davis is--or Miss Feathers is a career——

Senator DECONCINI. How big is your office?

Mr. MARTIN. I have 23 staffers and 8 lawyers, and——

Senator DECONCINI. How many cases do you handle in a year, or in a given period of time?

Mr. MARTIN. Oh, my goodness. You mean sensitive matters that—I have no idea. We handle quite a few. But we have help. We have—the agency—usually, it is an agency ethics problem, and we deal with the—you know—we have a lot of help from the ethics officials in each agency. So it is usually a joint effort.

Senator DECONCINI. Is it dozens, or hundreds, or——

Mr. MARTIN. Well, I—yes, I would say hundreds.

Senator DECONCINI. Hundreds of cases during the year?

Mr. MARTIN. Yes.

Senator DECONCINI. Have you found the staff's research to be accurate, and their overall work to be professional?

Mr. MARTIN. Yes. I have. I have to say that we are a small staff with an awesome responsibility, and I think they do a very good job. I made some changes when I arrived, but I find that their knowledge of the conflicts of interest laws, and ethics problems, in general, is outstanding.

Senator DECONCINI. Mr. Davis, I think, recommended that Mr. Meese be counseled because of the appearance of a problem. Was that a recommendation from him to you, and then on to Mr. Meese, or was that directly to Mr. Meese from Mr. Davis?

Mr. MARTIN. Senator, I am not sure I understood the question

Senator DECONCINI. Excuse me. I believe the testimony was that Mr. Davis recommended that Mr. Meese be counseled because of an appearance problem.

Mr. MARTIN. Right.

Senator DECONCINI. Was that from Mr. Davis to Mr. Meese, or from Mr. Davis——

Mr. MARTIN. No; no. I—no.

Senator DECONCINI [continuing]. To you, and from you to Mr. Meese?

Mr. MARTIN. We all—it was kind of we agreed that, yes, I had to——

Senator DECONCINI. Did you agree with that recommendation?

Mr. MARTIN. I thought that I had to take some action, and the action was, I advised Fred Fielding, the agency ethics official at the White House of my determination.

Senator DECONCINI. That Mr. Meese needed counseling?

Mr. MARTIN. Well, I actually said I did not see any need for corrective action. I already knew that Mr. Meese was aware of, well aware of the appearance problem, and of the standards of conduct regarding appearances. So I did not say, "Mr. Fielding, I want you to march down there and counsel Mr. Meese." I left it to Mr. Fielding.

Senator DECONCINI. You left it to Mr. Fielding to decide what to do as to counseling?

Mr. MARTIN. Yes.

Senator DECONCINI. Did you have any idea from talking to Mr. Fielding that he might counsel Mr. Meese?

Mr. MARTIN. I did not inquire. As Mr. Davis said, preceding my arrival there, there is a longstanding, close relationship, working relationship because of the appointment process, that he is fairly confident that Mr. Fielding would——

Senator DECONCINI. Do something? Have——

Mr. MARTIN. Whatever he felt was necessary. I think I read in my opening statement, for such actions as he deemed necessary in light of the agency's function.

Senator DECONCINI. Have you had occasion to work with Mr. Fielding before on such sensitive matters?

Mr. MARTIN. Oh, frequently.

Senator DECONCINI. About how many times?

Mr. MARTIN. Dozens.

Senator DECONCINI. Have you recommended before that no disciplinary action be taken, but that counseling should be considered instead?

Mr. MARTIN. Well, you mean directly to somebody that Mr. Fielding would deal with?

Senator DECONCINI. Right.

Mr. MARTIN. I do not recall but I have done that kind of thing with other agencies.

Senator DECONCINI. With other agencies?

Mr. MARTIN. Oh, sure.

Senator DECONCINI. With other people in the White House, too?

Mr. MARTIN. I do not recall that.

Senator DECONCINI. Did you have any contact in your professional area with Mr. Meese——

Mr. MARTIN. No.

Senator DECONCINI [continuing]. Prior to this. On any matter. Have any questions been asked of you regarding ethical conduct as it related to Mr. Meese or anyone else, by Mr. Meese?

Mr. MARTIN. You are asking me if I had direct contact with Mr. Meese.

Senator DECONCINI. Yes, sir.

Mr. MARTIN. No.

Senator DECONCINI. Never. And the office did not?

Mr. MARTIN. No.

Senator DECONCINI. As to Mr. Meese asking questions, or referring things to you about other members——

Mr. MARTIN. No. Any contact that was made with Mr. Meese was made through his private counsel. I had—his counsel, when Mr. Stein was first appointed, his counsel wanted some information about the ethics laws. They came to see me, and maybe Mr. Davis. I'm not sure if he was with me. And then later, when this, when I advised Mr. Fielding of the, of our preliminary determinations, they asked to see us. That is the only two contacts I have had with——

Senator DECONCINI. Now when you made the recommendation that counseling might be appropriate, did you make that to Mr. Fielding?

Mr. MARTIN. I did not do that to Mr. Fielding.

Senator DECONCINI. What did you do?

Mr. MARTIN. I just advised Mr. Fielding of the appearance problem.

Senator DECONCINI. You did not suggest counseling?

Mr. MARTIN. I did not.

Senator DECONCINI. Mr. Davis suggested counseling?

Mr. MARTIN. Mr. Davis suggested that I advise, so far as I recall, advise Mr. Fielding of the problem. Now, maybe he suggested counseling. You will have to ask him.

Senator DECONCINI. Mr. Davis, did you suggest counseling?

Mr. DAVIS. Senator, at one point I think I did, and then—

Senator DECONCINI. Now who did you suggest that to? Mr. Martin?

Mr. DAVIS. Mr. Martin. Yes, sir. At one point I think I did. However, when Mr. Martin, as I indicated, indicated to me—I was not privy to the conversation—but when he indicated to me that he had talked to Mr. Fielding about the case, and raised our concerns, I was satisfied. So, I do not know at a later date, whether we talked in terms of counseling or not, but the fact that it was raised to Mr. Fielding——

Senator DeConcini. It was raised to Mr. Fielding, by you?

Mr. Davis. No, sir. That was Mr. Martin's representation to me. I have no reason to believe it was not.

Senator DeConcini. Well, counseling was raised or was not raised?

Mr. Martin. No. It was not. In other words, I did not raise—I raised the problem with Mr. Fielding.

Senator DeConcini. I understand that.

Mr. Martin. OK.

Senator DeConcini. That is pretty clear. What about counseling?

Mr. Martin. No. I did not raise that with Mr.——

Senator DeConcini. You did not raise that?

Mr. Martin. No.

Senator DeConcini. You did have a recommendation from Mr. Davis, that in his judgment, counseling was something that should be considered by you, or suggested, by you?

Mr. Martin. Well, we talked about that, but I think Mr. Davis agreed with me, that bringing it to Fred Fielding's attention, the problem, the appearance problem, was satisfactory.

Senator DeConcini. And that counseling was not necessary?

Mr. Martin. No, that I did not have to tell Fred Fielding anything regarding counseling.

Senator DeConcini. Of course you did not have to tell him anything. My real point is that if Mr. Davis suggested counseling, you obviously felt that this was not necessary, to mention counseling?

Mr. Martin. I did not. I really did not——

Senator DeConcini. Why?

Mr. Martin [continuing]. Because——

Senator DeConcini. Why not?

Mr. Martin. Well, Mr. Meese's lawyers had—we had gone over in some detail and explained to them, exactly what the appearance standards were. So they knew it in detail. Fred Fielding already knew. I did not have to explain to Fred Fielding what the appearance problems were.

Senator DeConcini. Well, did you believe that Mr. Meese should have counseling?

Mr. Martin. At that point I presumed he was highly aware of the appearance problems, and that——

Senator DeConcini. The answer then——

Mr. Martin [continuing]. Counseling would be a useless act.

Senator DeConcini. Would be a useless act?

Mr. Martin. Yeah, I thought at that point.

Senator DeConcini. So that would be the reason for not saying, perhaps, "I think he needs counseling"?

Mr. Martin. That is right.

Senator DeConcini. How about future acts? Do you ever make suggestions that counseling should be considered to avoid problems in the future?

Mr. Martin. I am not sure I understand your question.

Senator DeConcini. Well, when you are involved in such actions as you are involved in, and telling, in this case Mr. Fielding, or the agency head, that in this case you did not feel there was anything unethical, there may be some appearance problems—do you ever suggest counseling——

Mr. **Martin**. Well, we, you know, my charter——

Senator **DeConcini** [continuing]. For future possible consideration to avoid this type of problem coming back to you?

Mr. **Martin**. Well, I think that counseling is always a nice thing to do, and certainly, in the ethics area, a proper thing to do, but when I believe it is unnecessary, I do not call for it. But yes, the charter, under the Ethics Act, calls for me to, where necessary, direct or suggest that corrective action should be undertaken.

Senator **DeConcini**. You lean toward counseling, I take it, is that right?

Mr. **Martin**. There are a number of things you could order, in terms of corrective action.

Senator **DeConcini**. In the area of ethics in government, do you tend to recommend counseling as a remedy to prevent future problems?

Mr. **Martin**. It is a form of a corrective action.

Senator **DeConcini**. Do you think that Mr. Meese should be counseled so this problem will be awarded in the future?

Mr. **Martin**. Now?

Senator **DeConcini**. His future. Yes.

Mr. **Martin**. Oh, no. I think he is heightened and very aware of not only the appearance, what we call the appearance problem, but all other standards of conduct.

Senator **DeConcini**. I take it from that, that you think this experience has educated him, raised his awareness, and that he is going to be a—I don't want to say a different person—but far more sensitive in the area of possible improprieties, or even appearances of possible improprieties?

Mr. **Martin**. I think beyond question, that is probably the case, and anybody who went through it, that would be the case, whether you were—regardless of what your standards were before, if you went through something like this—I think I am even more aware, and I deal with it daily, of the—and I think Senator Biden put his—it is really a tough area, and I do not know, I just do not know how anyone would not be more sensitive having gone through this, you know, 300 pages of examination and 6 months of independent counsel's investigation.

Senator **DeConcini**. Mr. Martin, this has been hashed over time and time again. I guess just for my own sake, I want to review Mr. Meese's failure to disclose that he had some relationship with Mr. McKean when he was meeting with the White House staff.

Would you walk me through that once again. Why do you feel that he had no obligation to either recuse himself, or at least, as Senator Biden indicated, set forth his relationship with Mr. McKean? Instead he relies now on a technicality, it seems to me, that he did not need to do anything. How did you feel about that?

Mr. **Martin**. I do not know if I said that, because when I say there is an appearance problem I am saying that there is an appearance problem. So I am not saying that——

Senator **DeConcini**. You are saying that there was an appearance problem——

Mr. **Martin**. In the McKean matter.

Senator **DeConcini**. In that he failed to mention the relationship. However, that in and of itself, of course, is——

Mr. **Martin**. That I think that it is clear, that Miss Feathers, Mr. Davis, and I, agree, that there was an appearance problem in the McKean matter.

Senator **DeConcini**. And so that is just part of your total report that there was an appearance problem there, but obviously, not necessitating any action——

Mr. **Martin**. It did not rise to the level of concern, that I thought that I had to take any corrective action, and Mr. Davis will confirm that.

Senator **DeConcini**. Now, what if there were—just hypothetically now—instead of one such appearance problem, 6 or 10 appearance problems? But nothing more.

Mr. **Martin**. Appearance problem.

Senator **DeConcini**. Would that lead you to conclude that some action should be taken? Or is it a definitive measure that, one's OK, two's OK——

Mr. **Martin**. No.

Senator **DeConcini** [continuing]. But 10, or some line you cross over?

Mr. **Martin**. A recurring set of an appearance problem, or any problem, would cause me to probably contact the agency ethics official, for probably two or three, not six, and say, "Look. I think you need—if one person thinks, in your agency thinks that this is not a problem to create appearances and you want to keep your people out of the newspapers, just based on appearances, you had better start doing a little more training and counseling."

Senator **DeConcini**. So do you think that after reviewing all the problems that Mr. Meese was involved in, the criminality of which he was absolved of in the Stein report, that there was no justification for finding that there was an appearance problem. Such problems as the fact that certain members of the board of directors, and officers of Great American Savings & Loan ended up receiving Federal appointments.

Mr. **Martin**. Well, that is what my staff found. Now I did not—I have not read every page of this report. I have read certain sections of it. But my staff reviewed it in some detail. Their—they did not—and I accepted their findings, even though I questioned some of them, and saying, "Are you sure that you are on solid ground here?" and they assured me they were. So, yes, I can say that I——

Senator **DeConcini**. Mr. Davis, let's just take the appointments of members of the board of directors of Great American Savings & Loan. You concluded, that there was not even an appearance problem. Is that accurate?

Mr. **Davis**. That is correct, Senator. We felt—I felt at that time, that, first of all, that this, this was—that these loans were arm's length business transactions. I mean, they were based on security that was available in the form of Mr Meese's residence. Granted, there were several mortgages and granted that there were perhaps extensions on the mortgage, but again, I cannot operate in a vacuum, and when I was in private practice for a period of 6 years, I had occasion to represent banking institutions. And it happens, that if there are certain customers where this type of thing takes place, where there is extensions of credit.

So what is the bottom line here we are looking for? It is not the business transactions. It is the involvement of the people that were appointed, and based on the findings of the independent counsel, I did not see that they were involved in the transactions——

Senator DeConcini. Let me just finish this line of questioning, if I may. I take it the fact that Mr. Meese had not made payments on one loan from January 1981 through April or May 1982; on a second loan from January 1981 through the same date; on the third loan from February 1981 until January 1982; on other loans missing 6 to 8 monthly payments; and even having made no payments on a personal loan from Mr. McKean, was of no consequence to you. Was this just the normal business of a bank dealing with a preferred customer.

That did not trouble you?

Mr. Davis. I considered it, it certainly was a factor, but in that particular case, I did not think it was enough.

Senator DeConcini. You seem to gloss over it. In your previous statement you said he might have missed a few or had been granted a few extensions. This is not a few extensions, Mr. Davis. This is a matter of hundreds of thousands of dollars, and though he made them up later, I am trying to figure out how you come to that conclusion. What is an appearance and what is not?

I take it the fact that favors, business or otherwise, are granted does not create problems so long as an individual does not have direct involvement in helping a person get an appointment. Is that a fair statement?

Mr. Davis. I do not think it is, Senator, and I will tell you why. I think the facts are such in this case, that the people that were appointed did not have a part in the granting of the favor. If I am not mistaken, the way I read the facts, there was only one individual involved that had anything to do with the loans, and that was a Mr. Luce, if I am—and perhaps I am pronouncing the name wrong, I cannot look at the report right now—but I think——

Senator DeConcini. They all worked for this organization that loaned the money, did they not?

Mr. Davis. They certainly did, but the independent counsel, it is my understanding in the findings, that the only occasion that I am aware of, was where he was consulted and said, "Go ahead and take action to perfect the security."

Senator DeConcini. The defense of the independent counsel is not what you are charged with. You are charged with making a judgment. My only point is, that apparently the business transactions are not important to you.

Mr. Davis. That is not true. You know, I have spent too much time thinking about it to say it is not important, because it is important to me. On the other hand, I had to rely on the facts that are in the case, and using very grey criteria that we talked about earlier, and to determine where we were coming out on this thing. And this was an area, based on the facts, without trying to gloss over anything, that I felt there was not enough of an appearance, or enough information to say there was any kind of a violation.

Senator DeConcini. Thank you, Mr. Davis. I have overextended my time. I thank the chairman. I have further questions.

Senator Hatch [presiding]. How much time do you need?

Senator Heflin. I do not know, a few minutes.

Senator Hatch. Please quickly finish your questioning.

Senator Heflin. I understood we were going to break at 12:30.

Senator Hatch. I would like to ask a few questions.

Senator Heflin. I had some questions. I have a luncheon engagement.

Senator Hatch. Do you know approximately how long you would take, Senator?

Senator Heflin. Oh, 10 or 15 minutes.

Senator Hatch. Why do we not have Senator DeConcini finish and then I will turn to you, after which I will finish.

Senator Heflin. I have a luncheon. I was told we were to make it 12:30.

Senator DeConcini. Why don't we break?

Senator Hatch. I would like to ask a few questions before we finish.

Senator DeConcini. Maybe Mr. Martin has a luncheon appointment, too.

Mr. Martin. I do not have a luncheon appointment, but I drank a lot of water. [Laughter.]

Senator Hatch. Would you like to go now.

Senator DeConcini. Mr. Chairman, I suggest that we take a break until sometime this afternoon.

Mr. Martin. I am willing to stay. I was kidding. I am certainly prepared to answer your questions now or later.

Senator Hatch. Let me try to ask some of the questions that I have. It will only take a few minutes. However, I would be happy to defer to my colleagues.

I have to say, along with Senator Laxalt, that I do not envy your position. It is a very difficult position to be in and these matters are very difficult to resolve.

I have to say that this whole area is an extremely confusing area to almost everyone concerned. Everyone has probably gained from the exposure that has resulted from these hearings with regard to dealings about ethics.

We have, as everybody knows, criminal violations that have to be considered with people in government, ethical violations.

You have actual improprieties. You have appearances of improprieties. And you have "appearance problems." These are all terms of art under the law, are they not? Is that not correct?

Mr. Martin. Yes.

Senator Hatch. You have potential appearance problems. Am I stating it reasonably well?

Mr. Davis. Very well.

Mr. Martin. You are.

Senator Hatch. In other words, it is a tough job you have.

Mr. Martin. We do not want to pat ourselves on the back, but, yes, we have judgments to make that are not easy and it is——

Senator Hatch. I think that is why you came to the conclusion that if one really wants to be sure that one is acting properly, then counsel from ones ethics advisor must be sought for. Is that right?

Mr. MARTIN. Well, it is certainly a way to help you. You can never be sure on an appearance problem. I mean, the last thing I ever thought I would be involved in as Director of the Office of Government Ethics is an appearance problem and I show up here this morning and I tell you I have one.

Senator HATCH. Certainly. Unless you are like numerous people—I am not talking about anyone on the committee—but numerous people who consistently find "appearance" problems with almost everything. Even those would not find appearance problems with everything. Let me just see if I can clarify a few things today. I am going to direct my questions to Mr. Martin and Miss Feathers.

You stated that you thoroughly went over the Stein report, the independent counsel's report. That was the main basis, including the Common Cause accusations and charges and their conclusions as well. Is that right?

Mr. DAVIS. That is correct.

Senator HATCH. You had access to maybe some other documents as they arose. Am I correct in that?

Mr. DAVIS. That is correct, Senator.

Senator HATCH. Your conclusion, your staff's conclusions—setting aside the McKean issue for right now—with regard to the Thomas loan, your conclusion was that "Mr. Meese's activities revealed no violation of standards of conduct for the Executive Office of the President or the Executive Order 11222." That is attachment A to the January 14, 1985 memorandum at page 5. Is that right?

Mr. DAVIS. That is correct.

Senator HATCH. Do you agree with that conclusion today?

Mr. DAVIS. We certainly do.

Senator HATCH. Do you also agree, Miss Feathers?

Miss FEATHERS. Yes, I agree.

Senator HATCH. Please both answer at the same time, if you will.

The second point, with regard to the Great American Savings Bank loans and appointments, your conclusion was that "Mr. Meese did not violate the standards"—and perhaps I should emphasize—"did not violate the standards of conduct because not one of the men, Luce, Gray, Sandstrom, or Pendleton, had participated in the loans to him. Mr. Meese did not have any favors to return. There was no conflict of interest."

Is that correct?

Mr. DAVIS. That is correct.

Senator HATCH. That was previously concluded. Is that your conclusion today?

Mr. DAVIS. Yes.

Miss FEATHERS. Yes.

Senator HATCH. To the best of your knowledge, as experts in this area. Admittedly, this is a very difficult area for anyone, including experts, to fully understand. Is that right?

Miss FEATHERS. Yes, that is correct.

Mr. DAVIS. Yes.

Senator HATCH. the third point was Army Reserve status and bank. With regard to that you stated:

Our review of the facts fails to uncover any standards of conduct violation in connection with his Reserve status and promotion. With respect to General Berkman's appointment, Mr. Meese did not violate the standards of conduct.

Was that your conclusion?

Mr. **Davis**. Yes, Senator.

Miss **Feathers**. Yes, it is.

Senator **Hatch**. Is that your belief today?

Mr. **Davis**. Yes, it is.

Senator **Hatch**. And is that your testimony before this committee?

Miss **Feathers**. Yes, it is.

Mr. **Davis**. That is correct.

Senator **Hatch**. Speaking on the next point regarding the payments from the transition organizations, your conclusion was that "our review of the independent counsel's report fails to reveal any violation. We concur with the independent counsel's conclusion that the payments appear to be legitimate compensation for services Mr. Meese performed for the transition effort."

Was that your conclusion then?

Mr. **Davis**. Yes, it was.

Miss **Feathers**. Yes, it was.

Senator **Hatch**. What is your conclusion today?

Mr. **Davis**. The same, sir.

Miss **Feathers**. It is the same.

Senator **Hatch**. With regard to the Carter campaign materials, you wrote:

Our review of the facts fails to uncover any standards of conduct violations by Mr. Meese in this area.

Was that your conclusion then?

Mr. **Davis**. Yes, sir.

Senator **Hatch**. How about today?

Miss **Feathers**. Yes, it is the same.

Mr. **Davis**. Same conclusion.

Senator **Hatch**. With regard to stock trading, we read, "We found no ethics violations in our review of the facts." Would you make the same comments today as you made then?

Mr. **Davis**. That is correct.

Miss **Feathers**. Yes.

Senator **Hatch**. With regard to special treatment for business entities, you determined, "We conclude that Mr. Meese did not violate any standards of conduct in this situation." Is that correct?

Mr. **Davis**. That is correct.

Miss **Feathers**. Yes.

Senator **Hatch**. Do you still feel the same today?

Mr. **Davis**. Yes, sir.

Miss **Feathers**. Yes.

Senator **Hatch**. With regard to the reporting of travel related expenses, you stated, "Given the facts set forth in the report, there is no basis for a standards of conduct violation."

Is that your opinion today?

Miss **Feathers**. Yes, it is.

Mr. **Davis**. Yes.

Senator HATCH. With regard to the William Moss Institute, you commented, "We find no basis for any standards of conduct violations." Same then and today? Is that your opinion today?

Mr. DAVIS. Yes, sir.

Miss FEATHERS. Yes.

Senator HATCH. With regard to the cufflinks—they are so important in this matter. You held that, "we do not find a violation under the standards of conduct."

Was that your decision then?

Mr. DAVIS. Yes, sir, it was.

Senator HATCH. Is that your decision today?

Miss FEATHERS. Yes, it is.

Mr. DAVIS. The same.

Senator HATCH. Finally, with regard to Federal grants—assume we are referring to Pepperdine—you said, "We find no violation of the standards of conduct."

Is this your opinion today?

Miss FEATHERS. Yes, it is.

Mr. DAVIS. That is correct.

Senator HATCH. It seems to me that the report of the Office of Government Ethics may be the perfect complement to the report of the independent counsel. While the counsel's report focuses on the absence of criminal conduct, the ethics report that you filed, or at least that you prepared before the final decisions were made, focuses on the absence of ethical misconduct. Is that correct, at least in those instances that I have just covered.

Mr. DAVIS. That is correct.

Miss FEATHERS. Yes, that is correct.

Senator HATCH. That is a fair statement? Is it not?

Mr. DAVIS. I think it is.

Senator HATCH. As I indicated yesterday, the counsel's report offers guidance to this committee on far more, it seems to me, than the narrow issue of criminality, which the Stein report knocks out.

Whatever anyone's judgment, it seems to me there can be no question that the ethics report fills any remaining investigational gaps left by the counsel's report. All counsel said was that it was not his job to pass on these matters. It is your job, however, is that correct?

Mr. DAVIS. We thought it was.

Senator HATCH. It seems to me that this committee must look at this as constituting the missing link that has been decried by some of my colleagues in the quest herein for justice and truth.

Let me ask you, Mr. Martin, because I think it is important to embellish your standards here, if a member of a legislative body, the U.S. Senate, for example, received a PAC contribution from a business or labor interest and subsequently casted a vote beneficial to that interest, even though he really did what he believed was correct, would this also constitute an "appearance" problem?

Mr. MARTIN. In my view it would. The Senator has done nothing wrong. He has done nothing unethical or improper, but it would tend to raise an appearance problem.

Senator HATCH. In other words, under the standard you have described here today, that would be an "appearance" problem even though there was absolutely no intent to do anything wrong. Is that right?

Mr. MARTIN. That is right.

Senator BIDEN. Would the Senator yield on that point?

Senator HEFLIN. Will the Senator yield on that?

Senator HATCH. The fact of the matter is that there is a big difference. When you accept that contribution you put it down on a form, give the name, address, telephone number, occupation, and you hand it to the press and to everybody else. By so doing, you say, this is who I got my contribution from.

Is there not a distinction between that in terms of appearance and accepting a contribution or a favor from a political contributor, not letting anybody know about that, and then voting in the interest of that party?

Mr. MARTIN. I think there is a difference in gradations, but I still think——

Senator HATCH. That is precisely my point. Even with all of that, there is still an "appearance" problem under your standard; is that correct?

Mr. MARTIN. Yes.

Senator HATCH. That is my point.

Senator HEFLIN. Would the Senator yield?

Senator HATCH. Yes. I would be delighted to yield.

Senator HEFLIN. There is specificity in the Senate rules as to what is considered a conflict of interest and the Senate rules set forth those interests. I think there is a need for this specific language rather than the general language that you have here.

Senator HATCH. Unlike some, I do not find any fault with that. I am just pointing out to everyone concerned that that is an "appearance" problem.

Mr. MARTIN. If you look at the standards we have—and, Senator Biden, I appreciate your concerns—but if you look at what—the language of ours is very broad. Our aspirational regulation says that you should avoid any activity which might result in or create the appearance, might result in. Now, come on, that is tough language. That is very broad. Almost any incident could trigger that.

Senator HATCH. Let me give you a few others.

Mr. MARTIN. I agree with Senator Biden, that it is a difficult area. And I have instructed my staff, based on not this but on others, that we really need to take a hard look at these regulations. We call them the 735 regulations.

Senator HATCH. What about this: If a Member of Congress accepts a job upon departure from office from a business enterprise whose interests he voted in favor of during the time he was in office; would that constitute an "appearance" problem?

Mr. MARTIN. I believe it would.

Senator HATCH. Under your standard?

Mr. MARTIN. Sure. Probably a criminal violation as well.

Senator HATCH. What if a Member of Congress invests in stock whose interests are potentially affected by his or her committee actions or votes? Is that an appearance problem?

Mr. MARTIN. Yes, it is.

Senator HATCH. What if a Member of Congress assists one of his or her constituents who has contributed to a recent campaign.

Maybe the Congressman assists them in getting a Federal job or a Federal contract? Would that constitute an appearance problem?

Mr. **Martin**. Yes, I think it probably would.

Senator **Hatch**. In other words, under the standard you have discussed here——

Mr. **Martin**. It would raise an appearance under this.

Senator **Hatch**. What if a Member of Congress accepts an honorarium for a speech before a trade association which has interests which may be affected by a committee that he or she sits on?

Mr. **Martin**. That clearly raises a problem.

Senator **Hatch**. Again, an "appearance" problem. Not illegal, not wrong, but an "appearance" problem. Is that correct?

Mr. **Martin**. That's correct.

Senator **Hatch**. What if a Member of Congress accepts a dinner or Christmas basket from a business which is affected by decisions made by his or her committee. Could it be an "appearance" problem?

Mr. **Martin**. It could.

Senator **Hatch**. It is pretty hard to disclose all that but maybe it could be under Senator Biden's suggestions here.

Senator **Biden**. I think it is. Maybe you read the rules different than I read then, but I thought that that was pretty clear.

Senator **Hatch**. You would disclose all your Christmas baskets?

Senator **Biden**. Yes. If they are over—it was $30. Now it is what?

Senator **Hatch**. Say it is a basket that is worth $1 or $5. Could that still constitute an "appearance" problem under your standards?

Mr. **Martin**. It could. I suppose you would reach a point of de minimis.

Senator **Hatch**. What if a Member of Congress assists in the appointment to public office of a constituent who happened to have made a campaign contribution to him or her?

Mr. **Martin**. That certainly could.

Senator **Hatch**. That also might constitute an "appearance" problem under your standard.

Mr. **Martin**. It may.

Senator **Hatch**. What if a Member of Congress secures an ambassadorship for a campaign contributor or a personal friend? All of these things happen around here. I just want people to realize that it is nice to sit back and judge any human being who comes up for a position in Government, but you could find fault with almost everybody if all that is wrong is an "appearance" problem.

Mr. **Martin**. Well, that is why it is so important for us to go behind an appearance and it is so important for the public and I think for the newspaper to realize they really ought to look behind an appearance before they print a headline that is saying there is an appearance problem because reputations are destroyed in the ethics area or tarnished and that is why we really insist on having our facts straight and our judgments clear.

Senator **Hatch**. That is what you, Mr. Davis, and you, Miss Feathers, have tried to do here. Is that right?

Mr. **Davis**. We made an effort at it.

Senator **Hatch**. You tried to go behind and see what you could find out. Correct?

Miss **Feathers**. We did.

Mr. **Davis**. Right.

Senator **Hatch**. You looked at all the remarks by Common Cause; you read the Stein report and you still stand by these conclusions. Is that right?

Mr. **Davis**. That is correct.

Miss **Feathers**. Yes. That is correct.

Senator **Biden**. May I ask a question?

Senator **Hatch**. Certainly.

Senator **Biden**. Let me ask you all this question: Would you apply any different standard if you are asked to look at whether or not a GS-12 had violated the appearance standard or whether or not a nominee for Attorney General violated the appearance standard?

Mr. **Martin**. You could not.

Mr. **Davis**. I smile, Senator, and say certainly not. We try to apply it across the board.

Senator **Biden**. Now, not in your capacity as members of the Ethics Committee, would you acknowledge as Americans that you would want a standard higher for the Attorney General than you would want for a GS-12, maybe?

Mr. **Martin**. That is rather suggestive. I heard your speech yesterday, Senator. We have a code of conduct and standards of conduct that all employees are supposed to abide by.

Senator **Biden**. That is right and that is really all you can do, is it not, in your job.

Mr. **Martin**. That is right.

Senator **Biden**. And so I, from my standpoint, I kind of get to the point where I am not suggesting what the Senator from Utah is doing now is not appropriate, but that this line of questioning that we have all had of you and of the details, it kind of moves into irrelevancy to me. I mean, I do not know what the relevance is anymore because it is not like you can put in a pigeon hole the standard for—you know—people have different standards for the President than they do for the Senator.

Some would even suggest sometimes Congresspersons can do something and if the Senator did the same thing their constituency would conclude they should not do it and would punish him politically at the polls.

And so I think we have to recognize in this hearing here that the unfortunate part is it is not something that is so precise and tangible either to justify voting for or against.

Senator **Hatch**. I think your point is well taken, but the reason I really went through that in part was because there seems to be some real confusion in this area. We have things called criminal violations in the law; we have ethical violations, actual improprieties, appearances of improprieties, appearance problems, and we have potential appearance problems.

One must distinguish between each of them because they are words of art. Frankly, it is for these reasons that the lawyer's code of professional responsibility in its official commentary has completely rejected a comprehensive "appearance" of impropriety standard because they know that no one could abide by it.

I will just read this, emphasizing that probably no one has a higher ethical duty than a lawyer. If a lawyer has the duty to a court or to a client or to anyone else, the lawyer ought to take action to meet that duty even if his or her conduct will be misunderstood.

It is a very interesting thing. It goes on to say that it is fortunate that avoiding even the appearance of professional impropriety was not made an element of the disciplinary rule for it is too vague a phrase to be useful and lawyers will differ as to what constitutes the appearance of evil. It says if the appearance of professional impropriety had been included as an element in the disciplinary rule, it is likely that the determination of whether particular conduct violated a rule would have degenerated from the determination of the fact issues specified by the rule into a determination on—and listen closely—on an instinctive, ad hoc, or even ad hominem basis.

If we do not have that in this case, I do not know what in hell we do have. The reason I went through all of this is to draw reference an old adage. "He who is without sin, let him cast the first stone." You people understand that it is quite difficult to have all the answers in advance for everything we do.

We all make mistakes. Mr. Meese has indicated here that if he had to do it all over again, with hindsight, he would certainly do it differently. He would not want to go through all this. I would add that I do not think anybody else would want to go through this either. That may be why we are having some difficulties, from time to time, finding people to take these high and honorable positions of government. I think that both conservatives and liberals often go too much on ideology. The truth is that sometimes ideology is really what is behind some of these problems that we have.

Let me finish with this. Mr. Martin, as far as I am concerned, you said that after looking at the McKean loan, which is the only matter I did not discuss with Mr. Davis and Miss Feathers in going through that list of where they stood at the time, and where they stand today; you said that after looking at the McKean loan, and after having been aided by staff and having gone over for a matter of weeks and having seriously considered it and having looked at the McKean report and the Common Cause accusations and conclusions, et cetera, et cetera, you determined there was no substance of impropriety. Is that correct?

Mr. MARTIN. That is correct.

Senator HATCH. All three of you have concluded that Mr. Meese did not violate any standard of conflict or ethics according to your position. Is that right?

Mr. MARTIN. That is correct.

Senator HATCH. Is that right?

Miss FEATHERS. Yes.

Senator HATCH. I for one do not want to be a judge. I really want to presume that people are innocent and that people are basically decent and ethical. I must also presume that people make mistakes even in government, even in high positions in government and that people have problems.

Senator METZENBAUM. If the acting chairman would yield for just a moment.

Senator HATCH. Please allow me to quickly finish; then I will be happy to yield.

I think people do have problems in every position in government, including even—it may be iconoclastic to say—but even in the U.S. Senate.

I know that no one will believe that, but nevertheless it is true. Sometimes it is a little "holier than thou" to stand here and pillory a person from pillar to post who has given a lifetime of public service and who we all know has the ability to do this job and do it well.

I think, even though we may differ with him ideologically, I for one am very pleased to have listened to you today. I can see your job is a very difficult job. You have to be judges on some very difficult standards and I do not know how anybody can do that job really well except in the more blatant things where you really can get into the question of what was in a person's mind, what was the intent of that human being. Through innuendo I suppose you can arrive at any conclusion depending on your presumptions.

That is why I agree with Senator Biden. If you presume the worst you can find the worst in anything as you can find the worst here. But if you presume that basically people are good who serve in government and that people really do want to do what is right, then you can find the best here, too. You can also find a lot of things in between if you want to. I think you have to look at the man and make a determination. I am sure our colleagues here on the Judiciary Committee will honestly make a determination as to what we think he really did do. I think we ought to give the benefit of the doubt to the man. That is my opinion.

Senator Metzenbaum?

Senator METZENBAUM. I just wanted to say to the acting chairman that I think you made much of the thrust of your concern about the issue of appearance, the issue of individual conduct; I think the chairman recognized Mr. Martin, I believe, was particularly sensitive when he made his opening statement because I don't think this hearing would ever have occurred if the Office of Government Ethics had concluded one way or the other on all of these issues. I think the reason this hearing is taking place is because two staff members found three ethical violations.

Now, whether it was a draft or whether it was a working paper, whatever.

Senator HATCH. Why do we not take their word for it here today?

Senator METZENBAUM. And then there was a change after they had met with Mr. Meese's attorney. And I think that it is in that area that this committee has indicated its concern. And I commended Mr. Martin before and I will repeat it. He recognized that there was an appearance problem and a reversal of position in a matter as sensitive as this. And I am not addressing myself to the ultimate conclusion nor am I addressing myself to the ethical aspects of Mr. Meese's conduct.

But I think that we ought not to lose sight of what this hearing is all about.

Senator HATCH. I think it is very important that we have had the hearing and that we have had these people appear. Now that they have, I feel it is important that we listen to them, and maybe just as important, that we give them the benefit of the doubt.

Mr. Martin, you looked as though you wanted to comment.

Mr. Martin. Well, I just hope, Senator, you are not inferring by the fact that I heard Mr. Meese's private attorneys that I acted improperly or that the change from the position of the working paper that was presented to me was not a mutually arrived at change involving my entire staff.

Senator Metzenbaum. I am not suggesting any impropriety on your part at all. I thought I made that very clear. I do have some additional questions with respect to the change but that we can get into after lunch.

Senator Hatch. Yes, Senator, we can.

Mr. Martin. I am very sensitive to my integrity and honor.

Senator Metzenbaum. I am not questioning your integrity and I made it clear right from the outset that I respect you and the other two members of your staff. I think you are dedicated public officials and I think you are trying to do the right job and I respect you for it.

Senator Hatch. Mr. Davis, do you feel the same way?

Mr. Davis. I have no comment. I feel that we did our basic work. Unfortunately people mischaracterized our initial efforts.

We gave it our best shot. And what we told you is the truth here this morning.

Senator Hatch. I guess you feel badly that people have mischaracterized your initial efforts, as well as your final conclusions. Can you imagine how Mr. Meese must feel?

Miss Feathers.

Miss Feathers. I agree with that, that we never intended for this to be anything more than a starting point in our discussions with Mr. Martin. It is very unfortunate that it had to come out like this, that many people misunderstand our final conclusion.

Senator Biden. Mr. Chairman, I just want to make a couple of brief comments.

I understand your admonition about adages, and you said, you know, "He who is blameless, cast the first stone." You know, I think it is dangerous to use adages because, otherwise, Mr. Meese would be in trouble. "If it walks like a duck, and quacks like a duck, and looks like a duck, you could say it's a duck."

Senator Hatch. Not really. You said you didn't see any unethical conduct here——

Senator Biden. No, wait a minute. I don't see any unethical—let me finish. I let you finish. Let me finish.

Senator Hatch. Sure.

Senator Biden. The notion that conclusions are being reached here relative to Mr. Meese, based upon merely ideological disagreements and/or presumptions against Mr. Meese, I don't think is accurate. All I want to say to you is—and I think you expressed it best. You said, "How would you like to be Mr. Meese," paraphrasing, "How would you like to be Mr. Meese. He said he would do things differently now because he wouldn't want to go through this again. He wouldn't want to have to go through this, and we wouldn't want to, either." That's the sticking point for me.

If the reason—my concern is that he wouldn't do what he did before because he wouldn't want to go through this, not because he concluded he shouldn't have done what he did before. There's a distinction. If my son says to me, "I won't do that again, Dad, because I know you're going to break my knuckles," that's a lot different than if my son says to me, "Dad, I won't do that again because I know I was wrong." It's a different standard.

Senator HATCH. I hope you're not taking the position that Mr. Meese was saying it just because he's appearing here in a moment of discomfort. That wasn't what I meant.

Senator BIDEN. You characterized Mr. Meese as saying that he would not do some of the things he did before, you characterized it as the rationale for his saying that was that, in fact, he wouldn't want to go through this again. I just want to tell you——

Senator HATCH. That wasn't the way I characterized it.

Senator BIDEN [continuing]. In the record the reason why I still have grave doubt about Mr. Meese is because I share that view. I wonder whether or not he says, "I wouldn't do it again" because he's concluded that he wasn't—didn't hold out a high enough standard or because he wouldn't want to go through this again. There's a difference to me in how I vote, as to what his rationale—this has nothing to do with any of you at the table.

So that's the only point I'm trying to make, that's the only point I'm trying to make.

Senator HATCH. I think that's a good point but, of course, I didn't mean that. I deduced from this that Mr. Meese would have done it differently if he would have known what he knows today. But certainly, having gone through this, there's no question that he wished he had. I don't know how much more he has to prostrate himself to make his point.

Senator HEFLIN. Mr. Chairman, may I suggest we adjourn for lunch?

Senator HATCH. Yes; let me just close with this.

I want to thank you all for being here. We're going to have to call you back because there are some other Senators who would like to question you, including on a second round. We'll start with Senator Heflin when we get back, who has been patiently waiting.

Senator HEFLIN. What time are we coming back?

Senator HATCH. Senator Thurmond asked that we be back at 2:00 o'clock.

Senator HEFLIN. That was when he thought we would adjourn at 12:30? [Laughter.]

Senator HATCH. We'll adjourn until 2 o'clock.

[Whereupon, at 1:15 p.m., the committee was in recess, to reconvene at 2:00 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

The distinguished Senator from Alabama, Mr. Heflin, now has the floor.

Senator HEFLIN. We were arguing when Senator Biden brought up the issue concerning the broadness of the term "appearance of impropriety" or appearance in connection with possible unethical conduct, about the difficulties of trying to deal with that.

I am interested, Mr. Martin, in at least some of your body language of nodding or movement or various other things that you were demonstrating there, as to what is the proper role regarding to the interpretation of the word "appearance" as it is used with "impropriety" or with unethical conduct.

Would you care to comment on it? I just was interested.

Mr. MARTIN. I'm not sure I understand your question, but is it what is the proper role of appearances in determining or in assessing conduct?

Senator HEFLIN. We have discussed the general, broad application of the word, and we could say an appearance arose in almost every instance in which a favor existed, in favor of an individual, where a person gave the favor and then, in turn, where he received something. We use the illustration of where a vote is made and find out there is a campaign contribution from the individual or from the group that might have given it.

The word "appearance" in the technical sense is so broad and general——

Mr. MARTIN. And elusive.

Senator HEFLIN [continuing]. And elusive. How do we distinguish between appearances of impropriety that in some people's eyes may be a bad appearance and in other people's eyes might be a mild appearance of an impropriety?

Now, are there any standards by which to make this judgment? Or is it simply left to the judgment of the individual charged with that responsibility?

Mr. MARTIN. Well, I have to say that, you know, when appearance arises, you really have to determine if there's anything to it. I mean, that's what I said earlier. You've got to look behind it. I don't think you can say there are strict standards for determining if there is an appearance or if there is something behind it. I think you have to use your common sense, Senator, and you have to look at every situation and develop whatever facts you can that either are connected with the appearance or behind it.

As I said, it's a very difficult job to judge these things, and we use a very commonsense approach and the institutional knowledge that's in the office is pretty good. We have a series of decisions and situations that we've looked at, and we keep that body of decisions handy. So I guess, to answer you simply, it's a commonsense approach.

Senator HEFLIN. You're using the words "common sense" in looking at your evaluation of appearances. Aren't you, in effect, using your own background and philosophy?

It appears to me that this is an area that needs more specificity, if you're going to use the word "appearance." Some people have certain hangups on certain subjects. We have a tough issue in a lot of sections of the country on the question of alcohol. If somebody smelled alcohol at a time, to some they say that doesn't make any difference. To others, it would mean that it was a terrible infraction. So it depends on your background, prejudices, and other things that might be involved. I suppose that's something we can't determine here, but I was just interested in your comments.

I am also interested in the status of Executive Order 11222. There are regulations that have been promulgated pertaining to this Executive order.

Now, you indicated these were aspirational——

Mr. MARTIN. In terms of the appearances part of it, yes, it is. There are some things in it that are not aspirational.

Senator HEFLIN. If there are any sanctions, the sanctions have to come from Congress, do they not? Don't they have to be laws, statutes?

Mr. MARTIN. No. This is an Executive order promulgated by a President of the United States.

Senator HEFLIN. Well, I mean if there's going to be any criminal sanctions.

Mr. MARTIN. That's correct. It would have to be——

Senator HEFLIN. But the Executive order does carry with it certain powers and certain limitations, a lot more limitations, than perhaps might first meet the eye.

But these aspirational ones, we certainly should aspire for them. There's no question about it. But it does raise in the whole field of ethics the extent that someone can go or not go. They are guidelines which we try to achieve. It's something that we at all times should never lose sight of.

Let me go to another matter that is more pertinent. Was your office, the Office of Government Ethics, called upon to make a determination in this instance, and if so, by whom? Or how did it originate in your office?

Mr. MARTIN. It originated at my direction.

Senator HEFLIN. At your direction.

Mr. MARTIN. Solely.

Senator HEFLIN. In other words, you had seen the news media accounts concerning the matter, and you asked your staff to review it?

Mr. MARTIN. Are you talking about the working paper that is the subject of my disclosure, or are you talking about initially, when these matters were disclosed in the newspapers some many months ago?

Senator HEFLIN. Well, I gather from the papers, from the letters that have been issued here, that you did not become involved in this until after the independent counsel's report was made.

Mr. MARTIN. That's incorrect.

Senator HEFLIN. Well, all right. That clarifies that.

Mr. MARTIN. When some of these matters first came to light in the newspapers, I felt I had an obligation to determine, as Director of the Office of Government Ethics, to determine what, if any, problems there were and deficiencies in Mr. Meese's financial disclosure. I sent a letter requesting and directing Fred Fielding, the designated agency ethics official for the White House, to determine those facts and get back to me. That's on record, and that was a letter.

Shortly after that——

Senator HEFLIN. In order to get that in proper sequence, was this after Mr. Meese had been nominated for the Attorney General and hearings were held?

Mr. **Martin**. No, I think it was before, when Mr. Meese's only position was as counselor to the President. You know, these allegations came out that—the cufflinks and all that business. It's when he was counselor to the President, and before he was nominated.

Senator **Heflin**. All right. Go ahead.

Mr. **Martin**. Then shortly thereafter I think Mr. Meese—I think maybe it was after his nomination. But in any event, the independent counsel—Mr. Meese requested independent counsel be appointed. He was appointed. At that point Mr. Fielding wrote back to me saying,"I presume that all the matters that you were going to raise will be subsumed or taken up by the independent counsel." Therefore, Mr. Fielding was out of it and I was out of it. The independent counsel was going to undertake——

Senator **Heflin**. In other words, when the independent counsel's investigation began there was, in effect, an abeyance, a stopping of your activity until after that?

Mr. **Martin**. That's correct.

Senator **Heflin**. Then you came back after the independent counsel had made his report to the court, and you looked at it again?

Mr. **Martin**. That's correct.

Senator **Heflin**. Now, in regards to your——

Mr. **Martin**. In both instances, though—in other words, the letter to Mr. Fielding and the review that my staff did of the independent counsel's report—was done solely at my direction.

Senator **Heflin**. Had you or your staff done anything previous to that time? Were there any memorandums that had been prepared by staff before that time, before you went into this abeyance?

Mr. **Martin**. I don't think so.

Senator **Heflin**. Just strictly at a discussion stage, and nothing had ever been submitted to your office for the preliminary discussion by you as Director with staff attorneys?

Mr. **Martin**. I don't think so. No; there were no memoranda.

Senator **Heflin**. Then after the independent counsel made his report, did you then give direction to your staff attorneys?

Mr. **Martin**. Immediately after the report, no.

Senator **Heflin**. Well, at some time after the report.

Mr. **Martin**. Yes; I did.

Senator **Heflin**. How long afterwards did you give——

Mr. **Martin**. I think it was some time in—my recollection is mid to early December.

Senator **Heflin**. Had there been, at any time after the independent counsel's report had been filed, and before you gave instructions to staff, any other directions or inquiries to your office from any outside source pertaining to this matter?

Mr. **Martin**. No.

Senator **Heflin**. None. So at the time that your staff attorneys started reviewing the independent counsel's report, there had been no outside sources—it had been just entirely a decision made by you as Director, in your responsibility of reviewing ethics in Government, in seeing if it raised a question, and then you have the authority to direct your staff and you exercised that authority?

Mr. **Martin**. That is correct, Senator.

Senator HEFLIN. Was it before or after Common Cause filed its papers regarding the case against Edwin Meese?

Mr. MARTIN. Oh, I don't recall if it was before or after. It was at about that time. I had been thinking for some time, probably ever since the report was issued, that I really need to review that report. But we had a busy fall and we had a conference in the fall. I have a small staff. This was a major undertaking. I had known for some time that I had to do it.

It may be that the Common Cause report may have triggered my decision that I had better get on with it.

Senator HEFLIN. In the staff memorandum it says in the latter part of December you requested we undertake a review of Common Cause's press release concerning their opposition to the nomination of Edwin Meese as Attorney General and compare Common Cause's findings with those of independent counsel.

You then assigned Mr. Davis and Miss Feathers to this review and they started the work on this. Was this the procedure?

Mr. MARTIN. That's correct. This decision, or this assignment, of course, was coordinated with my chief counsel because he directs the lawyers. He came to me and suggested they be the ones to do it, and I said that's fine.

Senator HEFLIN. After the staff memorandum was prepared, my copy has a stamped date of January 14, 1985. Was that the date that that was in effect submitted to your office?

Mr. MARTIN. I don't know—well, of course, it was in my office, Senator, but I don't know if that's the date I got it or the day before or the day after. I had been traveling out of the office I think around that time.

There was a draft a few days earlier that they had made some changes on that I didn't see. It didn't get to me. So I can't say it was that date exactly, but it was around that time.

Senator HEFLIN. After you received this, what did you do?

Mr. MARTIN. Well, they presented it to me and I made a lot of—I asked questions, made a lot of notes. I had a meeting with Mr. Campbell, Miss Feathers, and Mr. Davis, and I asked a lot of questions, made a lot of notes, and maybe had a couple of meetings with them because it was—you know, I made a searching inquiry of my own.

It was either that same day or the next day that I called Mr. Fielding and advised him of these preliminary—of our preliminary findings and our problem.

Senator HEFLIN. After you phoned Mr. Fielding, what was the next thing that occurred?

Mr. MARTIN. I guess that I—you know, Gary and Nancy were still making their—you know, still considering, I guess, my questions and developing the facts that I had raised, the questions I had raised in our meeting. At the time I called Mr. Fielding, he asked if I would see and hear Mr. Meese's private attorneys.

Senator HEFLIN. How long was that after you had notified Mr. Fielding?

Mr. MARTIN. Well, that was either the same evening or the next morning, I'm not certain.

Senator HEFLIN. When did you talk with Mr. Meese's attorneys?

Mr. MARTIN. As I said, that was the same evening or the next morning that I advised Mr. Fielding.

Senator HEFLIN. In other words, he phoned you and said "Will you see them" and they came over——

Mr. MARTIN. Well, they called me and arranged an appointment. My secretary would know. I was busy. It was either that evening or the next morning. But I said yeah, they should come see me and I'll be glad to hear them.

Senator HEFLIN. At the particular time that they called you, had they seen a copy of the internal memorandum of the Office of Government Ethics that Mr. Davis and Miss Feathers had prepared?

Mr. MARTIN. No one outside of my office saw a copy of that until I had to release it publicly.

Senator HEFLIN. All right, sir. But in your discussion that you had with the attorneys, what was the content of that discussion?

Mr. MARTIN. I told them of the conclusions that my staff had reached.

Senator HEFLIN. You had two areas that you were talking about?

Mr. MARTIN. That's correct.

Senator HEFLIN. When they left, did they ask to submit a memorandum to you pertaining to those matters?

Mr. MARTIN. Yes. That meeting was a very short meeting because they wanted to know what I had found and I told them, and they said "Can we get back to you?" and I said, "Of course." And they left.

Senator HEFLIN. At that meeting did they discuss the findings with Mr. Davis or Miss Feathers?

Mr. MARTIN. No. I met with them, with Mr. Campbell, my chief counsel.

Senator HEFLIN. When they left, there was an understanding that they would submit a memorandum to you?

Mr. MARTIN. I'm not sure whether they wanted to submit a memorandum or meet with me again or whatever, but they said "Can we get back to you on this" and I said, "Yes; you may."

Senator HEFLIN. How long was the meeting?

Mr. MARTIN. That initial meeting?

Senator HEFLIN. Yes.

Mr. MARTIN. Very brief. Not a half an hour. I would say less than half an hour and not—and more than 5 minutes.

Senator HEFLIN. Were they supplied with any written documents at that time?

Mr. MARTIN. They were given nothing.

Senator HEFLIN. How long was it after that time until the memorandum came?

Mr. MARTIN. OK. You're taxing my memory, but let's see if I can come up with it.

I think it was like 4 or 5 days, maybe 3 days.

Senator HEFLIN. Did they, before you received the memorandum, receive anything in writing which would have specified the concerns that you or staff members had, in writing?

Mr. MARTIN. Would you restate the question? I'm not sure I understand.

Senator HEFLIN. Did they, at any time before you received the memorandum, which you received some 3 days later, receive anything from you in writing as to the concerns that you might have concerning the review of this case?

Mr. **Martin**. No.

Senator **Heflin**. In other words, only from your oral presentation of the problem did they prepare their memorandum?

Mr. **Martin**. That's correct.

Senator **Heflin**. Is it permissible under your rules for us to have a copy here of that memorandum from his attorneys?

Mr. **Martin**. Well, if you want it, I'll give it to you. I don't know if I have it with me.

Senator **Heflin**. Do we have a copy of it?

Mr. **Short**. Yes, sir; I think that's been provided to the committee.

Senator **Heflin**. Well, if it has, I would like to——

The **Chairman**. The Senator's time is up, unless you feel you can finish all of your questions in 2 or 3 minutes.

Senator **Metzenbaum**. Mr. Chairman, may I ask unanimous consent that he be permitted to finish his line of inquiry?

The **Chairman**. Senator, how long will it take?

Senator **Heflin**. I don't think it will take more than maybe 10 more minutes.

Senator **Hatch**. I would be happy to yield my time to the distinguished Senator.

The **Chairman**. Go ahead, Senator. We'll extend your time.

Senator **Heflin**. Tell us what happened after the memorandum was received.

Mr. **Martin**. I gave the memorandum to my chief counsel and Mr. Davis and Miss Feathers.

Senator **Heflin**. What was the timeframe after you gave it to them until whatever occurred next?

Mr. **Martin**. Well, we had been, of course, deliberating on this matter. I asked Gary and Nancy to analyze this memorandum to see if it had any relevance for us and whether or not it would be of any help. Frankly, they came back to me and said it wasn't much help. It had not changed the view that we had kind of mutually arrived at, that there was one appearance problem that presented--well, there was one appearance problem.

So, following that, I advised them that I was going to call Fred Fielding and tell him that, based on our deliberations, we had arrived at the conclusion that there was one appearance problem here. I advised Mr. Davis and Miss Feathers that I would, indeed, do that, and I did. And then I advised Mr. Davis and Miss Feathers that I had done it.

Senator **Heflin**. Well, maybe to shorten my inquiry, let me ask you this: Was there any information, other than what is contained in the report of the independent counsel, Common Cause's position, and the memorandum from the attorneys? Does this represent all of the information that was reviewed in reaching your decision?

Mr. **Martin**. Essentially, that's it, but you might inquire of Mr. Davis and Miss Feathers if they looked at anything else. I don't know what else they looked at.

Senator **Heflin**. Did you have anything else that you looked at other than the report of the independent counsel, Common Cause's press release, I gather, rather than maybe their memorandum of some 20-odd pages that they circulated, and the memorandum of the attorneys for Mr. Meese?

Mr. **Davis**. The only other information, Senator, was we had the basic financial disclosure forms that were involved in the case. Those were our own files that we had. But we had no other files, nor did we look at any other documentation that I can recall.

Senator **Heflin**. Basically, then, the memorandum that you received, as I understand it, didn't really give you any information and didn't have any persuasiveness in making your decision, or didn't point out anything new to you?

Mr. **Davis**. That's correct.

Senator **Heflin**. So, then, it was in the process of reviewing this matter with your staff that you concluded that the two areas raised in the staff memorandum of January 14 might be wrong, and in effect, you reversed your opinions?

Mr. **Martin**. Senator, I kind of don't like the language you used, that I reversed myself. I never——

Senator **Heflin**. I mean that the staff reversed.

Mr. **Martin**. I don't know if they reversed themselves. We mutually arrived, after much deliberation, came to an examination and an analysis of what they had prepared, and arrived at a decision that we all agreed on, that there really was, in effect, one appearance problem, as I have described. So I don't think—this was a working paper. You can say it was a memorandum to me, but I told them to bring up all possible items that you think I should see. Don't limit yourselves in any way, and they did. I have to say that that gift theory that Mr. Davis was writing about was quite novel. I mean, it really was interesting.

But the truth is—and you can ask them—I don't think this was their final conclusion, and it certainly wasn't mine.

Senator **Heflin**. Well, you don't think that there was a reversal in the determination or the conclusion reached in the memorandum, that the forebearance of interest payments constituted a gift?

Mr. **Martin**. Well, this was part of an ongoing process of deliberation, but that really isn't—I certainly didn't reverse myself. But that's a question maybe you should ask Mr. Davis, did he reverse himself. I don't think he did.

Senator **Heflin**. I'm just trying to get to the facts of the thing and satisfy my own mind. I've tried to be fair from the beginning and tried to be openminded about this.

But you obviously had everything there, and you didn't have any additional information. You reached a conclusion at one time on the McKean loan that the failure to collect the interest constituted a gift.

Now, he later paid for it. He paid the interest and that sort of thing. But that information was available to you at that time. It seems to me that on that issue there is a clear reversal. You had all the information before you, one way or the other, as to whether the forebearance of the interest due on the loan was a gift or not.

Now, I would like to understand what went through the mental processes to change your mind on that.

Mr. **Martin**. May I say something before Mr. Davis does, Senator? My first question was, "Was this a gift and who was it from?" Maybe that prompted further analysis.

Mr. DAVIS. Senator, as I testified earlier, you may characterize it as a reversal. What happened was, I considered, as I indicated earlier, I considered a footnote—and I think I misread the facts, and they were called to my attention on one particular matter. I recall vividly, as I indicated earlier, that in our discussions Mr. Campbell pointed out to me that the way I was interpreting the footnote might not be correct, that I should take another look at it.

That footnote had to do with the idea that at some point in time, in December 1981, Mr. Meese had tendered an interest payment, and that interest payment had been returned. I weighed that heavily at that point, but I neglected to take into consideration that the actual obligation was not due until later the next year. I think it was July 1982.

When that was pointed out to me, I thought that made a difference. Then Mr. Martin raised the issue again of the trustee, and we began to talk about the status of the trustee and tracing back again to the language in the report, as to where, if it was a gift, who was the donor of that gift. If it was at someone's discretion, where did it come from? Again, I went back and——

Senator HEFLIN. What difference would it matter if it constitutes a gift as to who gave it? I mean, it wasn't the period of time of the nonpayment of interest. If under the facts as you had them then—and you had the facts here that the man had repaid the loan and had paid interest on interest, how could it have constituted, as of that time, a gift?

Mr. DAVIS. Well, Senator, first of all, all I was looking at in that context was—first of all, Mr. Meese had reported this item. He had reported the item. There was some confusion at the time as to whether it was a gift, first, whether the interest was a gift for the purposes of reporting. Quite frankly, we had to look at it in our office. I think there was a General Accounting Office opinion on this particular point.

We went back and said, "Look, include it on your financial disclosure statement and reflect the source."

Senator HEFLIN. Well, if it had been paid, I'm trying to understand how you concluded that it could have been a gift, or was it the fact that you just didn't give careful consideration to this book?

Mr. DAVIS. No; it was a situation where there was a forebearance. The issue is, was there a forebearance? Granted that later it was paid, but at the time the forebearance was made, was there a gift? And if so, where did the gift come from and did the donor of the gift receive something for it, or was he involved in this process.

Senator HEFLIN. Well, it is hard for me to understand that, where you're looking at interest and saying the failure to pay interest constitutes a gift, and you wrote it in your memorandum, and yet, in the facts contained on the special counsel, it shows that it was paid.

Mr. DAVIS. But the chronology of events, according to my understanding, Senator, is that it was paid later.

Senator HEFLIN. Well, if I'm delinquent 6 months, 8 months, that's something else. But then I paid. It's a payment. I mean, I don't understand the gift.

Mr. DAVIS. Well, you know, I think that was Mr. Meese's problem, also. He was confused, and so was his counsel, and so was our office initially, and so was the GAO. I think——

Senator HEFLIN. The only way that forebearance and a gift of interest can occur is that there has to be nonpayment. Isn't that fundamental? To me, that's as rudimentary as anything could be. If there was nonpayment, then it would be a gift. But if there is payment, it wouldn't be a gift.

Mr. DAVIS. I think that's fair. However, I think, if I contract with you—and I don't mean to be arguing with you because I think that was probably the basis of some people's confusion in this case. I guess the theory, that if I contract with you to use a certain *x* amount of money for a period of time, and I pay interest for the use of that money, and I use it for a longer period of time, did I receive something of value? Sure, granted that I may later come back and pay for that use, but before I pay for it, what is it called? How——

Senator HEFLIN. Wasn't there an interest payment on interest in this loan?

Mr. DAVIS. Yes, there was. Yes, there was.

Senator HEFLIN. That sort of does away with that argument, doesn't it?

Mr. DAVIS. I think, looking back, it certainly does.

Senator HEFLIN. All right.

I believe that's all at this time.

The CHAIRMAN. The distinguished Senator from Pennsylvania, Mr. Specter.

Senator SPECTER. Thank you very much, Mr. Chairman. The questions that I have, Mr. Davis, and Miss Feathers, go fundamentally to the process on your coming to agreement with Mr. Martin after you had written the memorandum which we have been discussing.

Mr. Davis, were you subjected to any pressure of any sort in coming to the ultimate conclusion which you testified to earlier today, that you agree with Mr. Martin's conclusions?

Mr. DAVIS. I was subjected to no pressure and I agreed with the conclusions.

Senator SPECTER. Is it customary—event that happens with some frequency—where you reach a preliminary conclusion that is modified after discussion with Mr. Martin?

Mr. DAVIS. Yes, sir; I think so. I think that has been my experience, not only with Mr. Martin but throughout the course of my employment at the office.

Senator SPECTER. How long have you been employed at the Office of Government Ethics?

Mr. DAVIS. Since its inception in 1979, sir. The Office was formed, if I recall, sort of in January 1979, and I came to the Office about in March.

Senator SPECTER. How many different matters have you been involved in, to the extent of preparing a memorandum, either solely or jointly, such as this one dated January 14, 1985?

Mr. DAVIS. Many, many, sir. I do not know how to characterize it.

Senator SPECTER. Give me an approximation.

Mr. DAVIS. Over 200.

Senator SPECTER. How many times has your view been altered after a discussion with Mr. Martin?

Mr. DAVIS. A great number of times. If I were to put a percentage, I think I would bat around 500, in the area. It seems to me, Senator, that that is what staff work is all about. When an issue like this surfaces, we go forward with our best effort, and a lot of times the language is changed. Some times they do not agree with the basic, the issues involved.

Senator SPECTER. Would you say that the basic conclusions that you have come to are altered 50 percent of the time, after they are reviewed by Mr. Martin?

Mr. DAVIS. In a report like this, maybe that is—I would—not in the case of Mr. Martin, no. I do not think it is 50 percent of the time in his case, and in a large matter like this, I would imagine it is closer to 95 percent of the time, that we are in agreement. But there are occasions, and there are times where a portion of our, a portion of my work is accepted, a portion is rejected. I never thought of it in terms of keeping the numbers on it.

Senator SPECTER. Well, I appreciate that, but I am interested in knowing how frequently it occurs. Does it occur 50 percent or 95 percent of the time, that your views are the same after conferring with Mr. Martin?

Mr. DAVIS. I really cannot say, for the reason—it seems to me that I did not discern any different pattern after Mr. Martin took over, that existed perhaps before when we had different Directors in the office. It depends on the type of problem we are working on.

Senator SPECTER Well, has the number of times that the Director has disagreed with your conclusion shifted significantly since Mr. Martin became Director?

Mr. DAVIS. I cannot say that. I cannot say that; no.

Senator SPECTER. Well, what can you say?

Mr. DAVIS. Well, it depends on the individual case. Normally Mr. Martin and I agree. The basic premise, that I sort of have the, some of the corporate memory around——

Senator SPECTER. Can you give me another illustration of a matter where you disagreed, obviously without mentioning the name, where you had submitted a memorandum and he had disagreed, and it had been modified in accordance with his ultimate judgment? What I am trying to do here, Mr. Davis, is really get some idea as to what is the normal course of your transactions, if this was a customary situation where you came to a conclusion and Mr. Martin disagreed, and this is something that happens all the time, or, was this an unusual situation?

Mr. DAVIS. It was not an unusual situation. I viewed this case as just normal staff work. It was not until this hearing came up that there was even a question, and I believe that this is the way we normally operated. It was a free exchange, give and take, between Mr. Martin and the staff. I was not inhibited.

Senator SPECTER. Can you think of another case in the course of the past 3 months, say, where you had submitted a memorandum like this one, Mr. Martin had disagreed, and it had been modified in accordance with Mr. Martin's views?

Mr. DAVIS. Past 3 months? I——

Senator SPECTER. While you are thinking about that, let me——

Mr. DAVIS. I would like to think on that one, sir.

Senator SPECTER. All right. While you are thinking about that——

Senator HEFLIN. I would like to request also 6 months.

Mr. DAVIS. I am having a hard time, gentlemen, because I do not really recall. It could be that perhaps some basic language, he does not like some of the words I use; I do not like some of the words that he used.

Senator SPECTER. Mr. Davis, I am not talking about slight changes or a difference in the selection of a word. I am talking about a fundamental change in your recommendation contrasted with his judgment, or his ultimate conclusion?

Mr. DAVIS. Normally not, but understand this: I do not think we had a fundamental overruling of me in this case, Senator. Maybe that is what we are missing. He did not overrule me in this case.

I presented my views, and when we came right down to the bottom, we were sort of in agreement on everything in here. The one item, the only item that I can discern that we had any—if there is a disagreement on—was the fact that, how we would handle the one appearance problem.

I think he felt there was an appearance problem, and I agreed there was an appearance problem. The rest of the issues in this paper fell away through my own volition, as we discussed it.

Senator SPECTER. I am not saying you disagreed with them at the end, but when you say they fell away as a result of your own volition, to take your characterization, they did fall away, which is a change, albeit your own volitionary change, from what you had previously thought. All I am trying to understand is that the judgment you are rendering today, in agreeing with Mr. Martin, is a free and voluntary choice, on your part, without any coercion, and without the overriding factor of a superior leaning on you a little bit. You are saying he did not lean on you?

Mr. DAVIS. That is correct. I am saying he did not lean on me.

Senator SPECTER. All right. Pursue, if you would for just a minute, the falling away line.

Mr. DAVIS. All right.

Senator SPECTER. What did you mean by that, because that, in your own mind, reflects some change in position in your own thinking?

Mr. DAVIS. I think it is—it evolved, my own thought process. There was a different interpretation of facts, once I started discussing those facts with everyone in the room, not only Mr. Martin.

Senator SPECTER. To which facts and which matter are you now referring?

Mr. DAVIS. I am referring—first, I tried to give the specific example of the weight that I put on the footnote transaction in connection with the gift aspect of it. The idea of a, some violation of a civil statute, the discussion in here on the five—U.S.C. 7351, the gifts to superiors—I put that in there, and quite frankly, I took it out because it was my creation, and I just—I put it in there because I thought it needed to be raised as an issue, because it is——

Senator SPECTER. You took it out before Mr. Martin said anything?

Mr. DAVIS. I think so. I do not recall, exactly, the timing, but clearly, in my own mind, it was an issue that was there, that I wanted to get rid of, because I just did not think it worked.

Senator SPECTER. Well, did you come to that conclusion before or after you submitted the memorandum?

Mr. DAVIS. I had that in mind when I submitted the memorandum. Quite frankly, what I was——

Senator SPECTER. You had what in mind, that it should not have been in the memorandum?

Mr. DAVIS. That it was not going to stay. It was not going to be a part of——

Senator SPECTER. Well, why did you put it in the memorandum?

Mr. DAVIS. Because I thought I should raise it, that I should raise the issue for consideration. I did not want to keep anything from the group.

Senator SPECTER. Well, it may be that in going in to your internal working papers, we are in an area where you had not expected anybody to look, but if it had been—you might expect that on an issue which you had not really intended to pursue, or was just being tossed up as a conceivable possibility that you would have denominated it as such, with an explanation, "I am not pressing this and do not expect it to stay, but here is one conceivable alternative."

Mr. DAVIS. Well, that is, that is a good point. That is a very good point because I think that is a good characterization of perhaps the entire internal document itself.

Senator SPECTER. So if you had it to do over, would you do it differently?

Mr. DAVIS. If I—yes, sir. I would have—if I thought it was going to be the subject, that this was going to be our final approach to whatever solution we came up with, I certainly would have been more careful in my——

Senator SPECTER. Mr. Davis, I think I understand your position, and time is limited. Let me move on to Miss Feathers and ask you, Miss Feathers, if you felt any pressure, or duress, or coercion of any sort at all?

Miss FEATHERS. No; I did not.

Senator SPECTER. Did you have the same view, that this latter issue discussed by Mr. Davis, would not stay in the picture after the memorandum was submitted?

Miss FEATHERS. The issue of 5 U.S.C. 7351?

Senator SPECTER. Yes.

Miss FEATHERS. Yes. I think at the time when we were putting it in,, and we made it pretty—we said it may be a violation. We brought it up that way, and also, we went in to quite a discussion in the working paper regarding our feelings, why maybe it was not applicable, doubts we had about how it could apply in this particular situation. I think even in this working paper, it came out that we were not sure at all that it was applicable, but we thought it was something we should raise so that we could hear other people's views on it.

Senator SPECTER. How long have you been a staff attorney, Miss Feathers?

Miss FEATHERS. Just since October 1984.

Senator SPECTER. How many matters have you worked on? How many Senate committees have you appeared before?

Miss FEATHERS. This is my first.

Senator SPECTER. Have there been other memoranda which you have submitted, where Mr. Davis has overruled you, or has expressed a different view, that you then agreed with? I do not want to choose any harsh words.

Miss FEATHERS. I have not prepared any other memoranda of this type at all in the office since I have been there. I have done other, like opinion letters and that type of thing, where usually what I feel is the draft I give, is the initial draft for comment from other attorneys in the office, since I am less experienced.

Senator SPECTER. Now, Mr. Martin, how many staff attorneys do you have working for you?

Mr. MARTIN. Six.

Senator SPECTER. They are all here today?

Mr. MARTIN. No. They are not.

[Laughter.]

Senator SPECTER. How frequent is it, Mr. Martin, that a memorandum will be submitted in this form, and there will be this kind of treatment where you will reach a differing judgment which will then be worked out in this process of joint agreement?

Mr. MARTIN. Well, that is the way I operate. When somebody brings a memorandum to me as a manager, I get them all in a room and I say, "OK. Let us talk about this. What are we going to do about this?" It is kind of my——

Senator SPECTER. Do any of your staff attorneys ever disagree with you, even after being brought in to the room?

Mr. MARTIN. Oh, sure. Sure Well, let me give you an example. I will frequently have two attorneys, or three, work on I really like to get a lot of opinions, and I have had two attorneys come in, and one has one opinion and one has the other. And so then I have to adopt one. I am the final guy that makes the decision so——

Senator SPECTER. I am asking you a little different question. I am asking you this question, when you bring your staff attorneys in, and you say, after a discussion, "I have a different view," is it frequent that your staff attorneys will say, "Mr. Martin, I disagree with that. I won't sign off on that, so far as I am concerned?"

Mr. MARTIN. No. Let me describe it differently, how I work. I ask—I do not present what my opinion is to my attorneys. I do not want to intimidate them, or let them know. I ask a lot of questions, a lot of questions.

Senator SPECTER. Any leading questions?

Mr. MARTIN. Leading? Oh, I am sure they may be leading. I do not know. Maybe they get the drift of where I am going.

Senator SPECTER. Maybe they can tell even by your questions?

Mr. MARTIN. Maybe they can. But you are a former prosecutor, and so am I, and so you understand that I guess I can be intimidating. I do not mean to be, but I ask a lot of questions and I want to be thorough. And I do not arrive at a conclusion until everybody has been heard, and I have ferreted out whatever facts I think need to be ferreted out. So then they may all come in to me, and I may get two that agree and one disagree or—on different items. But then——

Senator SPECTER. But there are——

Mr. MARTIN. At least I have an informed judgment, at least maybe a better informed judgment than they do, based on all the arguments that I have heard, kind of like a judge.

Senator SPECTER. But there are occasions where your staff attorneys will, at the conclusion of that procedure say, "I disagree, Mr. Martin"?

Mr. MARTIN. I have had attorneys do that.

Senator SPECTER. And then, of course, it is up to you to make the judgment? You are——

Mr. MARTIN. That is correct.

Senator SPECTER. You are in the position to make the judgment?

Mr. MARTIN. That is correct. I guess that goes with the job.

Senator SPECTER. Well, that is what you are supposed to do, of course. This memorandum was submitted on January 14, 1985?

Mr. MARTIN. I cannot say that I got it that day. I had been traveling and I am not sure if I got it that day, Senator.

Senator SPECTER. Well, I asked because it is an indistinct year on my copy. That was about the time it was submitted?

Mr. MARTIN. Yes.

Senator SPECTER. Why was it submitted so late in the sequence of events on this matter?

Mr. MARTIN. Well, that is an interesting—I think I explained it earlier. From the time the independent counsel's report had come out, I had known, in the back of my head, "I've got to review that." But events, we have a small staff, and we are busy, and this is a major undertaking, and I just did not get—maybe it slipped my mind—but when the common cause report came out, it triggered me— "Geez, you know, I really have got to review that thing," and so I think I immediately——

Senator SPECTER. How long before the date of submission had you made the assignment to Mr. Davis and Miss Feathers?

Mr. MARTIN. Well, my recollection, it was in mid to early December, but they have on the memorandum late December. I do not recall it was late December. Certainly, it was well before Christmas.

Senator SPECTER. Well, when did Mr. Stein's report come out?

Mr. MARTIN. It came out in October—September—late September or early October.

Senator SPECTER. Why did you not take this matter up immediately, at that point?

Mr. MARTIN. I should have, and as I explained, I am remiss in not doing it.

Senator SPECTER. Had you made a decision to defer taking the matter up until Mr. Stein's report was completed?

Mr. MARTIN. I had to. I assumed that it was incumbent upon me to take no action until Mr. Stein had completed his examination.

Senator SPECTER. Mr. Martin, from the time this report was submitted to you, how much time elapsed before you had the conversation with Miss Davis—Mr. Davis and Miss Feathers?

Mr. MARTIN. Senator, I am not sure——

Senator SPECTER. What was the time lapse after you received this memorandum, until you had the conversation which you have described, where you were all in agreement on the ultimate conclusion?

Mr. MARTIN. Oh, my goodness. It would have been 3 or 4 days later. It was from 1 week to the next. I think they may have given it to me like on a Wednesday or Thursday, and we—and it was like maybe the following Monday or Tuesday.

Senator SPECTER. Was anyone else, aside from the three of you, aware of their conclusions?

Mr. MARTIN. Mr. Campbell was an intimate part of this whole process. He is my chief counsel.

Senator SPECTER. But aside from the four of you, then?

Mr. MARTIN. No; the four of us were the only ones involved. Well, one other—I think maybe we ought to check with him. One other staff attorney may have been consulted, or asked her advice, but she was not a part of any negotiations and discussions, or meetings.

Senator SPECTER. Mr. Martin, on the issue of appearance of impropriety, as opposed to the substance of impropriety, there is an enormous amount which is written on this subject, and it touches many, many different lines of public officials and even beyond the public official line. And it comes up I suppose most frequently in the context of judges and judicial officials, and there is the requirement that the appearance of impropriety be avoided.

And these hearings have touched upon an analysis as to the separateness or overlap of appearance of impropriety as contrasted with the substance of impropriety. And one of the reasons to avoid the appearance of impropriety is that if a judge in a county seat in Montgomery County, PA, for example, may be seen doing something which appears improper, and a citizen sees it being done, there is no way to have an investigation, to make a determination as to whether the judge acted properly or improperly. So there is an effort made to avoid the appearance of impropriety because you cannot have investigations of every single event that occurs to everybody, who may be in a position of public trust.

What is your view as to the weight to be given appearance of impropriety as contrasted with the substance of impropriety, in a context where, as here, there is an opportunity for a full examination and a determination on the issue of substance of impropriety, of whether or not there is impropriety?

The CHAIRMAN. Senator, your time is up, but if you can finish in 2 or 3 minutes, we will let you go over.

Senator SPECTER. I will try to do that, Mr. Chairman.

Mr. MARTIN. I am not sure I can answer your question, or that I even understand what you are driving at, but——

Senator SPECTER. Well, do not start to answer until you know. Let me restate the question.

Mr. MARTIN. Well, all right. Rephrase it.

Senator SPECTER. Mr. Chairman, I think I can finish in just a few minutes. My question to you turns upon what you believe, in your position, in the Office of Government Ethics, as to the standing of an appearance of impropriety as opposed to the substance of impropriety. I start by making a comment, having been involved in many of these issues before myself, that there is a level of avoiding the appearance of impropriety, to have confidence in Government, because you cannot have investigations to see if there is a substance of impropriety beyond what appears.

That is contrasted with this kind of an inquiry which we are making today which is very exhaustive, and we can come to conclusions as to whether there is any substantive impropriety as distinguished from the appearance of impropriety.

In a situation where that kind of a determination can be made as to the substance of impropriety, if any, what then does that leave, if anything, to the issue of appearance of impropriety? Is the appearance of impropriety still relevant, in your opinion, in concluding whether or not there has been a violation of ethical standards?

Mr. **Martin**. Well, as I said earlier in the day, the standards of conduct regarding appearances are aspirational in nature. We all in the, as you say, in the public sector, have to live with that, and it is my view that regardless of how hard we may try, there may be instances where you cannot avoid an appearance, and in the Government, I think if there is an appearance, you cannot just say, "I cannot investigate it" or, "I cannot look at it." I think you have to look behind, especially where you are a high-ranking public official.

You have got to look behind an appearance to determine if there is anything to it. And that is what the Ethics Act and the ethics officials and the attorneys in the agencies are there for.

So you have to look behind the—in Government you have to look behind an appearance and——

Senator **Specter**. Well, governmental officials are charged with avoiding not only the substance of impropriety but the appearance of impropriety.

Mr. **Martin**. Right, and that is in a perfect world and we would all do it, but just as I, my example today is, I am now—I think I was before this hearing started; maybe I still am—I was under a cloud of an appearance. I do not know how I got there. Certainly, the newspapers fabricated some things, and—but here I am with an appearance. So, I do not know what I could have done to avoid it.

Senator **Specter**. Mr. Martin, I do not think there is any appearance of impropriety on your part. You have a job, you have submitted a report, and there are some questions about it, but I do not think there is any appearance of impropriety.

Mr. **Martin**. Well, the papers said I had overruled two attorneys. I had repressed a report.

Senator **Specter**. Well, I think you are in the clear, but let me just pursue this one more moment. In your judgment, given your position in the Office Of Government Ethics, if you have a situation where there is an appearance of impropriety, and then you come to the conclusion that there is substantively no impropriety, would that constitute an ethical violation?

Mr. **Martin**. I do not think so. I mean, you can give it a label, whatever you want to, but to me, I do not—they are aspirational in nature and I just do not see how you can say, that if there is nothing to the appearance, that there has been a violation.

Certainly, you want to caution against avoiding appearances but I just do not see how you can label that a violation.

Senator SPECTER. All right. Thank you very much, Mr. Martin. I would like to repeat, that I do not think that there is any suggestion of impropriety on your part, and these are difficult matters, and this inquiry has to go forward, and there are a lot of questions which we are asking, which should be answered, and we are all doing the best we can. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The distinguished Senator from Arizona. Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, thank you. Mr. Martin, I suspect you are sorrier than ever that a memo was made available. However, I am still slightly troubled on a couple of things. I would like to go over them once again. I am not going to discuss with you the two conclusions that were overruled in the staff memo, that of whether the forbearance of interest on the McKean loan was a gift, or whether there was an appearance of impropriety concerning the Barrack loan.

What I would like to discuss is the two conclusions concerning McKean's appointment, and get you and Mr. Davis, and Miss Feathers to focus on that.

You determined that there was no appearance of impropriety when Mr. Meese was twice, one of four approving officials for the appointment of Mr. McKean to the Board of Governors of the Postal Service.

You base this on the following facts in your letter."At the time of the loans there was no evidence that Mr. McKean was interested in a Federal job." Second, "Both loans were arm's length transactions." That Mr. Deaver brought up Mr. McKean's name both times. And last, the independent counsel found no evidence that Meese helped McKean.

Let me discuss these with you. What difference does it make, as to whether there was an appearance of impropriety at the time of the selection, if McKean was not interested in a Federal job when the loan was made?

It seems to me the decision to recuse himself, or at least notify his colleagues of the relationship, should have been made based on the facts, and not on the time that it occurred.

Do you disagree with that statement?

Mr. MARTIN. Well, I am not sure. My reasoning was this: That at the time Mr. Meese went to Mr. McKean to arrange a loan, Mr. McKean had—you know—there was no idea in his mind, McKean's mind, that he was going to seek a Government job, nor in Mr. Meese's. So I mean it is just a fact that I think tends to corroborate both of their statements, that there was no linkage, if you will, between Mr. McKean arranging the loan and ultimately getting a Government job.

Senator DECONCINI. But they did happen. There is no question that both of those things happened?

Mr. MARTIN. That is correct.

Senator DECONCINI. I just do not understand what difference it makes as to whether there was an appearance of impropriety at the time of the selection whether or not McKean was interested in a Federal job when the loan was made. Do you not think that someone in the position of Mr. Meese ought to have done more? You obviously do not.

Mr. MARTIN. Ought to have done more?

Senator DECONCINI. Yes; ought to have recused himself or——

Mr. MARTIN. Senator, I think Mr. Davis and Miss Feathers, and me, agree that there was an appearance problem. I am not saying there was not an appearance problem.

Senator DECONCINI. Now on the second time around, there was a letter there about his election to the Postal Board.

Mr. MARTIN. Mr. McKean sent a letter to Mister——

Senator DECONCINI. Right. What difference does it make, then, that Mr. Deaver brought up McKean's name, as to whether Mr. Meese should have recused himself, or acknowledge the relationship?

Mr. MARTIN. Well, it was just——

Senator DECONCINI. Anything at all?

Mr. MARTIN [continuing]. One more fact that Mr. Meese was not pushing for Mr. McKean and really——

Senator DECONCINI. Yes; OK. Not that that, by any means, indicates that Mr. Meese might not have done something himself. Just the fact that he was not pushing him?

Mr. MARTIN. He was not. No.

Senator DECONCINI. OK.

Mr. MARTIN. Nor did Mr. McKean ask him to, I do not think.

Senator DECONCINI. Now although the independent counsel found that Mr. Meese did not talk to anyone about McKean, or assist him, he did approve him in the meeting?

Mr. MARTIN. That is correct.

Senator DECONCINI. That is my understanding.

Mr. MARTIN. That is correct, and you are talking about for the full-time position?

Senator DECONCINI. Yes.

Mr. MARTIN. Yes; he approved him. He took no other action except——

Senator DECONCINI. Yes; except approval.

Mr. MARTIN. Yes.

Senator DECONCINI. In your judgment, that is not an appearance of impropriety in and of itself?

Mr. MARTIN. Well, I am saying that Mr. Davis, Miss Feathers, and me agreed, that this McKean arrangement and loan situation, and then Mr. McKean subsequently getting a full-time position, is an appearance problem.

Senator DECONCINI. Yes, and that is all. It does not go any further than that?

Mr. MARTIN. I think there is no indication that Mr. Meese acted unethically, improperly, or was, based on his own words, and Mr. McKean's own words, that they did anything improper in terms of, "Gee, if I arrange this loan for you, I am going to get you a Government job." I do not think that ever occurred.

Senator DECONCINI. I agree with you that——

Mr. MARTIN. And so I do not think there is anything improper there.

Senator DECONCINI. But there is an appearance?

Mr. MARTIN. Yes.

Senator DECONCINI. Do you concur, that there is an appearance?

Mr. MARTIN. I have said that from the very minute I opened my mouth in this hearing.

Senator DECONCINI. I was not here when you opened your mouth at the beginning, but you did say it? This is more than——

Mr. MARTIN. Yes; I did, Senator.

Senator DECONCINI. This is not the first time you have said it, granted. Let me ask you one question here that troubled me. That is on the question of Mr. Meese's commission while he was on active status and the IG's report regarding that. You found nothing irregular there. Let me ask the question in a general sense. Have you in the past come across these types of ethical questions or problems involving people receiving promotions while they are in Government office? Is that something that——

Mr. MARTIN. Well, that is something that is generally handled by the special counsel to the Merit System Protection Board, where there is favoritism, or some matter that is improper in the selection and promotion process. That would not be handled by my office.

Senator DECONCINI. So you do not get that type of inquiry?

Mr. MARTIN. I do not get that kind, no.

Senator DECONCINI. You did look at this one?

Mr. MARTIN. Mr. Davis and Miss Feathers looked at it.

Senator DECONCINI. Mr. Davis and Miss Feathers, you had looked at this one, the Army——

Mr. DAVIS. Only what was in the report, sir.

Senator DECONCINI. You mean what was in the independent counsel——

Mr. DAVIS. Independent counsel's report. That is correct.

Senator DECONCINI. You went no further than that?

Mr. DAVIS. We went no further.

Senator DECONCINI. Were you restricted to just that report by your job description, or your agency description? What made you just look at that report?

Mr. MARTIN. Well, let me take him off the hook.

Senator DECONCINI. Was it easy because it was big and substantive?

Mr. MARTIN. It, to me, was the basic allegations against Mr. Meese, and I thought they should be reviewed by me. I did not restrict them to only that, but I guess I suggested that that is what they ought to focus on.

Senator DECONCINI. Yes; but within their report they were not restricted from going out, if they had wanted to talk to others.

Mr. MARTIN. Not by me, no.

Senator DECONCINI. Is that your understanding, Mr. Davis?

Mr. DAVIS. I was not sure, Senator, but I know that I did not do it. Point in fact: I relied on this and I did not use the separate IG report——

Senator DECONCINI. Just out of curiosity, did you feel like you could have gone to talk to General Turnage or Secretary Marsh or anyone else, or were you just satisfied that these were "my parameters of review"?

Mr. DAVIS. I was satisfied to rely on the report. We have no investigative staff, we are a very small office, and——

Senator **DeConcini**. That was the next question I was going to ask you, Mr. Martin. What do you do yourself if you need investigative work? Go back to the agency?

Mr. **Martin**. I am authorized to call upon the agencies, the Federal Bureau of Investigation, or the inspector generals to do investigative work for our office. We have a small staff of accountants, analysts, and lawyers.

Senator **DeConcini**. Must they do it, or is that at their discretion?

Mr. **Martin**. Well, they will.

Senator **DeConcini**. They will do it?

Mr. **Martin**. Yes.

Senator **DeConcini**. You have done that a number of times?

Mr. **Martin**. I have done it, yes.

Senator **DeConcini**. In this particular case, did you ask for any additional information outside what was in the report?

Mr. **Martin**. I did not.

Senator **DeConcini**. Any reason? Were you satisfied?

Mr. **Martin**. Well, I was satisfied and I did not think I needed to.

Senator **DeConcini**. You were satisfied by—obviously, you said you did not read the whole thing nor have I, but you were satisfied because your staff did not recommend anything additional. Is that right?

Mr. **Martin**. They did not recommend to me, and I assure you that they have the leeway if they would recommend something or wanted to do something, they know I would give them authority to go look.

Senator **DeConcini**. Now Mr. Davis, you were satisfied that there was nothing outside of this report that you needed to look at? Is that a fair——

Mr. **Davis**. Under the circumstances that we had the assignment, that is correct. I felt that I was relying on the findings of the special counsel to determine, as I indicated in the cover memo, I think, what standards were involved.

Senator **DeConcini**. Well, I concur with the Senator from Pennsylvania, it is a difficult situation. I hesitate to belabor it. It poses a dilemma, when one political office is charged with the responsibility of overseeing another political office, by a political appointee, as you are. I must say I think you have conducted yourself in a very honorable way, and it certainly is not your problem. But it leaves a question. Is this the best way to go about it?

Mr. Martin, would you give us an opinion as to whether or not you think this process should be more independent. Instead of relying on a political appointee to the office that is going to review other political appointees made by the same party and of the same administration?

Mr. **Martin**. Well, I can only give you what I have experienced, and I have experienced no pressure, or persuasion of any type from anyone in the executive branch regarding any decisions or investigations I have to make.

The problem I think is, that I end up, I do not have any friends, which I think goes with the job, but now I am being facetious.

I have—I am literally an independent operator. I really have had no pressure and no—and it is often difficult, because I think at the level that I have to deal with, and the people I have to deal with, it would be nice if I could consult with somebody else at the same or higher rank that I am, on particular problems.

But I do not feel I can, or should. At least that is the way I have viewed the office. So to answer your question, I do not know that it is a problem if you are from the same political party. At least, it has not been in this case.

But I do not know that in a different situation that, in a different administration, that there might not be.

Senator DECONCINI. I do not really mean the same political party. I mean as a member of the administration, which obviously you are. I presume you consider yourself that.

Mr. MARTIN. Yes.

Senator DECONCINI. You attend administration meetings. Were you there recently when the President spoke?

Mr. MARTIN. No. I was not there. I was invited. I did not go.

Senator DECONCINI. On purpose?

Mr. MARTIN. No. Not on purpose. I had promised my son that I would take him on a skiing trip and I aborted it shortly after this arose but——

Senator DECONCINI. That is certainly an admirable thing and one of correct judgment, I can assure you. Not because the meeting was not good, but I have a son who likes to ski also.

I have no further questions, Mr. Chairman. Thank you, Mr. Martin, very much

The CHAIRMAN. Thank you. Senator Hatch, do you have any further questions?

Senator HATCH. No. I have no further questions.

The CHAIRMAN. Senator Metzenbaum, do you have any further questions?

Senator METZENBAUM. Mr. Martin, Senator Levin has asked me to request that you answer his questions. Has that been done as yet?

Mr. MARTIN. Have I answered his questions?

Senator METZENBAUM. Yes.

Mr. MARTIN. Honestly, Senator, I have not had time to consider his questions. I was worried about this hearing, first. So I have not answered his questions.

Senator METZENBAUM. Well, on his behalf, he has asked you if you would be good enough to answer them quickly.

Mr. MARTIN. You might tell him, I am certainly going to answer his question, but I just—he would understand, I think, that I have not had time.

Senator METZENBAUM. Can I give him any advice as to when he may anticipate an answer?

Mr. MARTIN. Well, it will certainly be as soon as I can look at—I have not even looked at them but as soon as I can look at them I will certainly get them to him.

Senator METZENBAUM. All right. On his behalf I would ask that you act quickly.

Mr. MARTIN. I intend to do that, Senator.

Senator METZENBAUM. Mr. Chairman, I think that there is some value to getting on with the outside witnesses who have been waiting 3 days now to testify, and I am going to waive my opportunity to ask any additional questions.

The CHAIRMAN. Well, now as I understand, this side is through asking questions. Senator, do you have any more questions?

Senator SPECTER. I do not. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hatch, you have any more?

Senator HATCH. No, thank you, Mr. Chairman.

The CHAIRMAN. And this side is through asking questions?

Senator METZENBAUM. I think you may make that assumption. We have no word that anybody wants to be heard.

The CHAIRMAN. So everybody is through asking questions of this panel. So in a few minutes we can dismiss this panel. Mr. Martin, I have not taken all of my time. I just want to ask you one question. By the way, without objection, I will place in the record the document provided by Mr. Meese's counsel to the Office of Government Ethics. I believe somebody wanted that put in.

Senator METZENBAUM. What is that?

The CHAIRMAN. Judge Heflin, I think, wanted that put in.

Senator METZENBAUM. What is it?

The CHAIRMAN. It is a document provided by Mr. Meese's counsel to the Office of Government Ethics, and I think Judge Heflin wanted it put in.

Senator METZENBAUM. No objection.

[Material referred to follows:]

DOCUMENT PROVIDED BY MR. MEESE'S COUNSEL TO THE OFFICE OF GOVERNMENT ETHICS

Following the Independent Counsel's Report, David H. Martin, Director of the Office of Government Ethics, instructed his staff to review the entire 385-page Report from the standpoint of ethical compliance. The staff was of the view that only two of the matters investigated raised any possible questions. Mr. Martin discussed these with the Office of White House Counsel and, in turn, permitted Mr. Meese's Counsel an opportunity to be heard.

It became readily apparent in Mr. Martin's discussions with Mr. Meese's counsel that the OGE staff had misread the Independent Counsel's findings in connection with one of the two matters. Mr. Meese's counsel submitted a written presentation on the law and facts relating to the single remaining matter, and the Office of Government Ethics concluded, upon completing its internal review of this matter, that there was no basis for any action.

I. MR. MEESE ACTED PROPERLY IN CONNECTION WITH PRESIDENT REAGAN'S 1981 NOMINATION OF JOHN R. McKEAN TO AN UNEXPIRED TERM ON THE POSTAL SERVICE BOARD OF GOVERNORS

In June 1981, at Michael Deaver's suggestion, Mr. and Mrs. Meese consulted accountant John R. McKean with respect to the Meeses' financial planning. [Report of Independent Counsel, dated September 20, 1984 (hereafter "Report"), at 109-115] At a June 13 meeting, Mr. McKean stated that the Meeses should borrow at least $40,000 to cover their immediate needs, and "said he had sources available to his accounting firm for making a loan." [Report at 112] Mr. McKean informed Mr. and Mrs. Meese, however, that if they borrowed from these sources they "would have to pay a slightly higher [than market] interest rate." [Report at 114]

On June 17, 1981, Mr. McKean and Mr. Meese agreed that Mr. and Mrs. Meese would borrow $40,000 for at least one year, at an interest rate of 21 percent for the first three months, and 18 percent (or the Bank of America prime rate, whichever was higher) thereafter. [Report at 114-115] The prime rate on June 17, 1981, was less than the 21 percent rate Mr. and Mrs. Meese agreed to pay for the loan. [Report at 115] The Independent Counsel has concluded that this loan was an arms-length transaction and that Mr. and Mrs. Meese paid a higher rate of interest than they would have had to pay had they negotiated a loan from a bank. [Report at 146] The Independent Counsel has also concluded that neither Mr. Meese nor Mr. McKean had any thoughts whatsoever during June 1981 of Mr. McKean's possibly later serving in federal government. [Report at 146-147]

In July 1981, without discussing the matter in advance with Mr. Meese, Mr. Deaver recommended that Mr. McKean's name be presented to the President to be considered for an unexpired term on the Postal Board of Governors. [Report at 118-127] The three other members of the Senior Staff, including Mr. Meese, agreed. [Id.] The President approved the idea of nominating Mr. McKean on October 30, 1981. [Report at 127] On November 4, 1981, the President formally nominated Mr. McKean to an unexpired term, ending December 8, 1986, on the Board of Governors.

It is clear from the undisputed facts that when the Senior Staff met in July 1981, Mr. Meese believed, and had good reason to believe, that he was not receiving anything of value from Mr. McKean, except the minimal courtesies that professionals ordinarily extend to clients for general business reasons. Mr. McKean had simply arranged the loan, and in any event Mr. and Mrs. Meese were obligated to pay above-market rates of interest on that loan.[1/] Whatever "benefits" one could say Mr. McKean had conferred upon Mr. Meese were therefore technical and insignificant. As a purely factual matter, it would thus be unreasonable to say

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[1/] Mr. Meese decided not to take the additional time and effort in June 1981 to find better loan terms elsewhere because of the press of his official duties in Washington.

that Mr. Meese acted improperly by not withholding his opinion in July 1981, from the President and other staffers, of Mr. McKean's fitness to serve on the Board of Governors.

Since there must be a "reasonable basis" in fact before conduct can be said even to present an ethical problem, see generally O. Maru, Annotated Code of Professional Responsibility 401-403 (American Bar Foundation 1979) (and cases cited therein); United States v. Standard Oil Co., 136 F. Supp. 345, 362 (S.D.N.Y. 1955) ("a practical test [must] be employed in determining when an appearance of evil exists"), the lack of a reasonable factual basis is dispositive of the issue whether Mr. Meese's conduct gives rise to questions of impropriety. Id. There are two additional and important reasons, however, why it would be both unsound and unfair to say that Mr. Meese's conduct was in some way improper. We discuss these two reasons below.

(1) "Avoiding The Appearance Of Impropriety" Is Too Vague And Elusive A Phrase To Determine "Ethical Violations" In Connection With The Presidential Appointment Process

"Appearance" is a very vague and elusive concept. See, e.g., O. Maru, Annotated Code of Professional Responsibility 399; ABA Committee on Ethics and Professional Responsibility, Formal Opinion 342, p.3 n.9, p.5 n.17 (1975) (hereafter "Formal Opinion 342"). The American Bar Association's Committee on Ethics and Professional Responsibility has stated that "'the appearance of professional impropriety' * * * is too vague a phrase to be useful" in determining whether an attorney has engaged in an ethical violation. Formal Opinion 342 at 5 n.17. Such a rule produces ethical determinations made "on an instinctive, ad hoc or even ad hominem basis." Id.

In August 1983, the American Bar Association adopted Model Rules of Professional Conduct. The Model Rules do not contain an "appearance of impropriety" section. Canon 9 of the ABA's former Code of Professional Responsibility did provide that "a lawyer should avoid even the appearance of professional impropriety," but even then the general standard was intended to be aspirational rather than the basis for disciplinary action. The ABA's textual and historical notes to Canon 9 state in this respect:

> "John F. Sutton, Jr., reporter for the drafting committee, has stated that some interpreters of Canon 9 have radically misunderstood the purpose of the Canon; they have assumed that there is a rule in the Canon that states that a lawyer should avoid the appearance of impropriety, but there actually is no such rule. [Citation omitted] Sutton noted that the committee intended for the last Canon to provide the lawyer with guidance about what to do in situations not discussed in the first eight Canons. He stressed, however, that the lawyer's duty to avoid the appearance of professional impropriety was of a much lower order than the duties specified in the other provisions of the Code:
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>> If a lawyer has a duty to a court, or to a client or to some one else, the lawyer ought to take action to meet that duty even if his conduct will be misunderstood. Only where there's no real guidance and no other interest to be served should a lawyer act on the possibility of appearance. If there's no other guidance anywhere in the Code, then the lawyer looks to Canon 9 and does what makes the professional look best; however, the lawyer should not let Canon 9 stand in his way in doing what's proper under other canons and DR's. [Citation omitted]
>
> Sutton also stated that the drafting committee thought that there were situations in which the appearance of impropriety became so important that such situations should be mentioned specifically in the Disciplinary Rules. The Committee conceived of three such instances and set forth rules to govern the lawyer's conduct in these situations in DR 9-101(A), (B), and (C). ('[W]e carved out three specifics and in effect said: these are the only three situations where you must act -- where you are required to act -- to avoid the appearance of impropriety.'" O. Maru, Annotated Code of Professional Responsibility at 398-399.[2/]

[2/] The textual notes proceed at this point to discuss Formal Opinion 342, which is mentioned above, in which the Committee on Professional Ethics and Grievances stated that "'appearance of professional impropriety' is not a standard, test or element embodied in DR 9-101(B)" but rather "is a policy consideration supporting the existence of the Disciplinary Rule." The Committee also noted that "[t]he the appearance of evil is only one" of the considerations underlying the rule and that it "is probably not the most important reason for the creation and existence of the rule itself."

In short, while government employees should strive to avoid improper appearances, there is a large difference between general standards of conduct, such as 3 C.F.R. § 100.735-4,[3/] which are aspirational, and precise ethical rules that a person's conduct can be said to violate. The experience of the American legal community is that general "appearance" standards are far too vague and uncertain to be used as rules of the latter type.

This conclusion applies with even greater force when the conduct at issue arises in connection with the Presidential appointment process. There, vague standards become altogether meaningless. For example, what would it mean to say that the President, or one of his surrogates, shall not "create the appearance of * * * [g]iving preferential treatment to any person." 3 C.F.R. § 100.735-4(c)(2). Throughout history Presidents, with the aid of their advisors, have appointed their supporters, campaign contributors, personal friends, professional acquaintances, persons of the same political party, and/or relatives. It is nonsensical to say that either the President who

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[3/] "(a) All employees shall conduct themselves on the job in such a manner that the work of their agency is efficiently accomplished and courtesy, consideration, and promptness are observed in dealings with the Congress, the public, and other governmental agencies.

(b) All employees shall conduct themselves off the job in such a manner as not to reflect adversely upon their agency or the Federal service.

(c) In all circumstances employees shall conduct themselves so as to exemplify the highest standards of integrity. An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(1) Using public office for private gain;
(2) Giving preferential treatment to any person;
(3) Impeding Government efficiency or economy;
(4) Losing complete independence or impartiality;
(5) Making a Government decision outside official channels; or
(6) Affecting adversely the confidence of the public in the integrity of the Government."

appoints, or the advisors who counsel the President to appoint, a political supporter or campaign contributor to a position in the Federal Government has violated the ethical rules governing the Executive Branch by creating an appearance of giving preferential treatment, or an appearance of using public office for private gain. 3 C.F.R. § 100.735-4(c)(1) and (2). Yet that is precisely where the "appearance" argument leads when applied as an ethical "rule" to the Presidential appointment process.

(2) Even If There Were A Reasonable Factual Basis For A Determination Of Impropriety, And Even If The "Appearance" Standard Applied As A Strict Rule To The Presidential Appointment Process, It Would Be Unfair To Apply Such A Newly Defined Rule Retroactively And Selectively Against Mr. Meese

Even if there were a reasonable factual basis to support a conclusion that Mr. Meese acted improperly by participating in the 1981 appointment process with respect to Mr. McKean, and even if such a conclusion were jurisprudentially sound, it would still be unfair to draw such a conclusion against Mr. Meese, because to do so would be to apply retroactively and selectively against Mr. Meese what would amount to newly defined ethical rules. To our knowledge, neither the Office of Government Ethics nor any other federal agency has ever applied such a rule in any analogous situation in the past.[4] It may be that a concern should be expressed as to how prospectively to provide more precise or comprehensive rules of conduct with respect to the appointment process. But it would be manifestly unfair to use criticism of Mr. Meese as a way of giving content and definition to the vague and elusive concept of "appearances."

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[4] Indeed, as we understand it, there has not even been such criticism of Mr. Deaver, although it was Mr. Deaver who initiated both of Mr. McKean's appointments while engaging in an arguably beneficial business relationship with Mr. McKean. See generally Report of the Comptroller General of the United States, dated September 14, 1983, pp. 2-3. It is no answer to say that Mr. Meese alone was the subject of the Independent Counsel investigation, for the Congressional intent behind the Ethics in Government Act was that there should be no disadvantage to public officials who have undergone such investigation and have been exonerated. See generally S. Rep. No. 496, 97th Cong., 2d Sess. 1, 18-19 (1982), reprinted in, 1982 U.S. Code Cong. & Ad. News 3537, 3554 (Senate Report to the 1982 Amendments).

II. MR. MEESE ALSO ACTED PROPERLY IN CONNECTION WITH THE PRESIDENT'S 1982 NOMINATION OF MR. McKEAN TO A FULL TERM ON THE BOARD OF GOVERNORS

The general arguments stated above concerning "appearances" apply as well to President Reagan's 1982 appointment of Mr. McKean to a full term. It is unnecessary to repeat those arguments here. But it is important to emphasize that Mr. Meese's role, such as it was, in connection with the 1982 appointment was altogether passive.

The Independent Counsel reached the following central conclusion with respect to this appointment: "Our investigation uncovered no evidence that Mr. Meese spoke to anyone or took any action to assist Mr. McKean in obtaining a longer term." [Report at 135 (emphasis supplied)] It was Mr. Deaver who was the moving force behind Mr. McKean's longer term, and Ms. von Damm who assisted Mr. Deaver in the logistical matters. [Report at 134-135, 147] Although the documents show that Mr. McKean "as a courtesy" [Report at 134] raised the matter with Mr. Meese by letter, dated September 14, 1982, and at a meeting on November 8, 1982, Mr. McKean did not ask Mr. Meese to do anything and, in fact, Mr. Meese did nothing. [Report at 135, 147] In any real sense, Mr. Meese was outside of the decision-making process.

Mr. Meese discussed personal business and Post Office matters with Mr. McKean on November 8, but by that time Mr. Deaver had already set in motion Mr. McKean's nomination to a longer term,[5] and what remained to be done, according to Helene von Damm, was merely "a formality." [Report at 134]

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[5] Senior Staff Meeting Notes produced by the White House during the Independent Counsel's investigation show that as early as October 27, 1982, Mr. McKean's longer term was discussed. Ms. von Damm's undated memorandum [see Report at 134] appears to have been written at or about this time.

The Independent Counsel found the testimonial and documentary evidence to show that Mr. and Mrs. Meese at all times anticipated the loans would ultimately be repaid at the stated (above-market) rates of interest. [Report at 147-148] Thus, Mr. Meese again had good reason to believe that he was not receiving any substantial economic benefits from Mr. McKean's handling of the loans -- a handling that ultimately cost Mr. and Mrs. Meese a large amount of money ($23,440.12) in interest. [Report at 135, 137-138]

CONCLUSION

For the reasons stated above, we submit it would be wrong as a matter of fact, wrong as a matter of ethical jurisprudence, wrong in terms of the realities of the Presidential appointment process, and plainly unfair to reach a conclusion that Mr. Meese "violated" any ethical rules.

In the final analysis it should be noted, indeed underlined, that after a searching examination of the 385-page Report, only a single possible ethical issue remains, and that issue is surrounded by great ambiguity and novelty.

The **Chairman**. Mr. Martin, we can go around and ask you 10,000 questions. I want to ask you a few very simple questions. As I understand, you deemed it advisable to look in to the questions that were raised in the special counsel's report.

Mr. **Martin**. Independent counsel's report.

The **Chairman**. Independent counsel's report. And also, Common Cause's questions, that they raise, and maybe other matters that other people had raised. Is that correct?

Mr. **Martin**. That is correct.

The **Chairman**. And that was your purpose here in this matter, was it?

Mr. **Martin**. It was my purpose to fulfill my responsibilities.

The **Chairman**. To fulfill your responsibilities, you felt you should do that?

Mr. **Martin**. Yes. I did.

The **Chairman**. And you referred this matter to two staff attorneys to look into?

Mr. **Martin**. That is correct.

The **Chairman**. Mr. Davis and Miss Feathers?

Mr. **Martin**. That is correct.

The **Chairman**. And they gave you a memorandum on the subject, in which they raise matters that might be of concern, that should be further considered; is that right?

Mr. **Martin**. That is correct.

The **Chairman**. They did not reach any definite conclusions, as I understand, or make any final recommendations, but raised issues that you felt might be looked into further, if you felt it advisable?

Mr. **Martin**. That is how I understood it, and I think that is the way they—they were told to raise all possible things that I should, which should come to my attention.

The **Chairman**. I see. Now some of the news media had it that there was an internal memorandum, and there was an attempt to hide it, and so forth, by these attorneys, and an effort not to disclose it, and that you had overruled them.

Did you figure that you overruled them or maybe referred them the matter to look into, to raise these issues that deserve further consideration, and which you would confer with them and resolve?

Mr. **Martin**. Well, Senator, I did not, in my view, overrule them or anyone else. I think I, the way I managed my office is, I think we mutually considered the things they had raised, and arrived at, I think, what was a mutual decision.

The **Chairman**. And you felt it was their duty to raise these issues?

Mr. **Martin**. I did, indeed.

The **Chairman**. And I presume you are glad they did raise these issues, so they could receive further consideration?

Mr. **Martin**. I asked them to do, yes——

The **Chairman**. And you and the attorneys, these staff attorneys here, Mr. Davis and Miss Feathers, did consider these matters further. You went into them in more detail. You made some notes, I believe, on the question, asked them to look further into it again, and then you all got together and resolved it, and found that Mr. Meese had not violated the ethics. Is that correct?

Mr. **Martin**. Had not violated any conflict of interest laws or standards of conduct, that is correct. But I did say he had an appearance problem in that one instance which I have described fully today.

The **Chairman**. Yes. In other words, there was an appearance problem, but when you looked into it, you found that it did not affect the substance of the matter, and after all, that is what really counts, is it not?

Mr. **Martin**. I determined that Mr. Meese had not violated any ethical standards, that he had acted properly and with objectivity, and impartiality in conducting his duties.

The **Chairman**. After all, what the public is interested in, and what this committee I think ought to be interested in, and I am sure are interested in, is the substance of the matter. It is not the appearance, or it is not necessarily their perception, but it is where the facts lie. And as I understand, you and your attorneys are in agreement, that there was no substance here of impropriety, and you so found. Is that correct?

Mr. **Martin**. That is correct.

The **Chairman**. Mr. Davis, are you in accord with just what he said?

Mr. **Davis**. That is correct, Senator.

The **Chairman**. Miss Feathers, are you in accord with just what he said?

Miss **Feathers**. Yes. I am.

The **Chairman**. I think that is what the hearing is all about, and we have taken several hours to go into all of this situation, but I think that brings it down to what this committee is really interested in.

We thank you very much for your appearance here, and we are now going to take a 5-minute recess before we go on to these next witnesses. We appreciate your coming up here in person and giving us the benefit of your information, and we appreciate it further, that you made this staff memorandum public, which you did not have to do. You are in the executive branch and you could have refused that, but we appreciate your doing it because we have nothing to hide. We want to bring out all the facts. Thank you very much. We will take a recess for 5 minutes.

[Whereupon, a brief recess was taken.]

The **Chairman**. The committee will come to order. Yesterday, the distinguished ranking member and Senator Metzenbaum and I were talking about an agreement to vote, and they both said that they would check their side and see if they would agree to a certain time. We checked our side and they have all agreed to vote on next Tuesday at a certain time, no carryovers.

Senator Biden checked his side, and he told me that everybody has agreed to vote except Senator DeConcini, that he wanted to hear what this ethics office had to say.

Senator DeConcini has just reported to me that he is now satisfied to vote now next Tuesday.

So as I understand it from the ranking member, that's the way it stands; in other words, we will try to finish up here today, then have a time certain next Tuesday at 10 o'clock to vote.

Senator **DeConcini**. Mr. Chairman.

The **Chairman**. Yes, Senator DeConcini.

Senator **DeConcini**. I am advised by one of my staff people that Senator Baucus has not agreed to that. I was just told that 5 minutes ago.

The **Chairman**. Well, Senator Biden told me yesterday that all had agreed, except you, and you told me a few minutes ago that you had now agreed.

Senator **DeConcini**. That is correct.

The **Chairman**. Well, if there is any change in this, we would like to know, because that may affect the proceedings.

Senator **DeConcini**. Well, I agree, and I only suggest that somebody contact Senator Baucus' office.

The **Chairman**. Well, contact Senator Biden—he's the one that made the agreement, the ranking member.

Is there staff here? Can they contact him? If you would get him to the floor right away, we would appreciate it.

Senator **DeConcini**. Thank you, Mr. Chairman.

The **Chairman**. Thank you. Now, the agreement was to be this: The committee has agreed to vote on Mr. Meese next Tuesday, February 5, 1985; there will be no efforts to block the vote on Mr. Meese, and all members have agreed that there will be no effort in the committee to lay his nomination over, and therefore the vote would be next Tuesday.

That's the agreement between the ranking member and I; Senator Metzenbaum was in accord with that. And we will stand by that until Mr. Biden comes in and says differently.

Senator **DeConcini**. Senator Baucus.

The **Chairman**. No, Senator Biden is the one I dealt with; he is the one that told me that all had agreed.

Senator **DeConcini**. Well, Mr. Chairman, I don't want to be argumentative, but if the chairman would yield. I realize that our leader on this side is Senator Biden, but there are at least two Senators, I am told, who have not agreed to it. This Senator is no longer one of them. So there are two Democratic Senators who have not agreed to that.

The **Chairman**. Well, Senator Biden speaks generally for the Democrats on the committee, and I hope we can get him down here in a few minutes.

Senator **Metzenbaum**. We'll be working on that, Mr. Chairman; we will try to cooperate.

The **Chairman**. Now we will proceed to these other witnesses. Now, this is panel two, the Honorable Archibald Cox, chairman, Common Cause, Washington, DC, and then panel three is the Honorable William P. Rogers, former Attorney General and former Secretary of State.

And I thought that we would give them 15 minutes apiece to present their cause, and then propound questions. And then proceed on with panel four and give them, the rest of the witnesses, whether they are pro or con, 5 minutes each.

So if there is no objection, we will proceed that way.

Mr. Cox, will you stand up and be sworn.

[The witness was sworn.]

Have a seat, Mr. Cox. Excuse me just a moment, I have another meeting I have got to go to for a few minutes, and I am going to ask Senator Hatch if he will take the chair until I return.

Senator HATCH [presiding]. Go ahead, Mr. Cox.

STATEMENT OF HON. ARCHIBALD COX, CHAIRMAN, COMMON CAUSE, WASHINGTON, DC

Mr. COX. Senator Hatch, other members of the Judiciary Committee, may I say first that I appreciate this opportunity to testify on behalf of Common Cause on the nomination of Edwin Meese to be Attorney General. We oppose the nomination We did not come to that conclusion lightly. When the nomination was first made, we submitted a statement urging the committee of the importance of its assignment; bearing in mind the President's freedom of choice in choosing his Cabinet, we refrained from any opposition until there came out facts at the hearing, which have subsequently been confirmed, that convinced us that Mr. Meese, unfortunately, simply could not embody and ensure the high standards incumbent upon an Attorney General.

I have stated our reasons in a statement that we have filed. I will summarize them a little later. I want first simply in a word or two to emphasize the importance of the post of Attorney General.

Respect for law, the fairness with which law is administered, is the foundation of a free society. The individual who becomes Attorney General can do more by his past record than his conduct in office to strengthen or to erode confidence in the fairness, impartiality, integrity, freedom from taint of personal influence, in the administration of law.

But, of course, the Attorney General could do more than that. He, more than anyone else, can give the American people, if he is the right man and conducts himself right, that he is concerned with ensuring that public officials really do treat public office as a public trust

I can't resist taking a moment of my time just to express in personal terms the importance that I attribute to that. I was introduced to the practice of the law by a man who had worked under Attorney General William D. Mitchell, and their constant reference to his fairness, to his impartiality, to his ethical standard, seeing the way it had influenced them had an enormous influence on me. And I worked as a young lawyer in the Office of the Solicitor General under Charles Faye, who was the same way. I tried my best in the Department, now more than 20 years ago, to set that kind of example to other young lawyers all over the country.

It's that setting of an example, it seems to me, embodying the highest principles, that seem to me to be the very essence of the job, in addition to its statutory duties.

As I say, I have set forth in the statement our reasons for believing that Edwin Meese, unfortunately, cannot fulfill that function. I would like to summarize those reasons under three or four heads.

The first has become self-evident. The report of independent counsel does not pass upon Mr. Meese's fitness to be Attorney General. It says that explicitly. That ought to be the end of the matter.

The second point I want to emphasize is the standard of conduct that we think all public officials should observe, must observe, but, above all, the Attorney General or one who hopes to be Attorney General. A public office official should not mix personal, financial affairs with the exercise of official power or influence, period. Just as clear as that. A public official, to be more specific, must not act on government business of an individual to whom he is under obligation because of a financial transaction, currently or in the recent past. And again, I think, it's just as simple as that. That standard, as I see it, is at stake in these proceedings—whether we will maintain it, whether the Senate will maintain it or not.

Let me develop the point a little bit by examples, because it makes it easier. Suppose a judge sits in a case involving a man who has lent him $40,000 or $60,000. Clearly he must recuse himself. It's wrong to sit in; no matter how much the judge says I won't let that influence me, no matter how sincerely he believes that it hasn't influenced him, he must not sit. And if a judicial conduct commission learns that he has sat and called him to explain himself, it may, in judging how guilty he is of moral turpitude or something like that, inquire into whether he really was influenced—but even if it finds that he wasn't influenced or that at least he honestly believed that he wasn't influenced, it is still going to censure him for having done wrong.

Take another example. Suppose that an attorney in the office of a county prosecutor or the U.S. Attorney General finds in front of him a file in which he is called upon to determine whether an investigation of criminal wrongdoing of some kind should be pushed further, and he decides no, and then the U.S. attorney, or the district attorney in the State, later sees the file and he goes and speaks to the lawyer and says: John, wasn't that man who you decided shouldn't be prosecuted or shouldn't be investigated further, wasn't it his realty company that took that house off your hands that you have been trying to sell for 18 months? Yes, sir. Well, didn't you know any better than to sit on that, to pass on that case? Well, it didn't influence me; he didn't pay any more than the house was worth.

That wouldn't be an answer. It might determine how seriously he should be treated—he was a young man, perhaps a good lecture or lesson would do. If he was more experienced, perhaps—certainly if it happened a second time, he would have to be dismissed.

But it's no answer to say: well, I wasn't influenced by it.

Again, suppose an attorney in the Department of Justice finds a file on his desk dealing with a possible suit for tax problems, and he discovers that the individual named is an officer of a bank to which he is heavily in debt on a mortgage. He passes it along; he has nothing to do with that case; he mustn't have anything to do with it. If he does have anything to do with it, he is casting doubt on the fairness and impartiality of the administration of justice. I am sure that happens over and over again.

This isn't confined to the Government. Suppose that a bank officer approves a loan to a realty company, and the senior officer of the bank learns that in fact an officer of the realty company had made a loan to the loan officer of the bank or had bought the house he had been trying to sell for 18 months. He most certainly would tell that loan officer: you have abused your position, you have mixed your personal financial obligations with passing on a position of trust and confidence.

Now, I submit, members of the committee, that this isn't a new principle; it isn't something invented by me or by Common Cause. It is a principle traditionally observed by honorable men and women, particularly by trustees and members of the bar. There is a lot of history referred to in our written statement, summarized.

It's expressed in two ways in rules and regulations that are binding on Government officials. Executive Order 11222 forbids an employee in the executive branch to do anything that might result in giving preferential treatment. Well, acting on the case of a man to whom you are obligated might result in giving preferential treatment; it might result in losing complete independence of action. And certainly—the Executive order goes beyond, then—it says "might create the appearance of giving preferential treatment." And it's a taboo, and properly so. It isn't qualified by "don't do it unless you can satisfy someone later that you had no corrupt motive." It's: don't do it.

And Government officials have been disciplined, properly, over and over again for acting under those circumstances.

Similarly, it's embodied in the order applicable to White House employees that one shall not accept a loan from anyone who may have business before his agency. I misspoke myself when I said "White House employees"—it's applicable generally throughout the Government—one shall not accept a loan from anyone who may have business before his agency.

Well, why? Because if you act on the case of your creditor, you can't be sure of acting impartially and fairly. And no one after the event, much less you yourselves, can be sure.

There are two other reasons, I think. First, however sure you are subjectively, those watching don't know what was going on in your mind. It's an impropriety to act in such a case, partly because you may short-change, may cheat the Government and be influenced, and, second, because those looking may lose confidence in the impartiality of Government action.

But it isn't just that one has acted in a way that creates the appearance that he has done something wrong. He has done something wrong. And the reason is that that gives an appearance, as in the case of the judge and the others, that lessens confidence in the administration of justice.

And, of course, the third danger is, even if the man who does it the first time is completely scrupulous, others in the Government are going to see what was done; they may not be quite so conscientious—but they see the example. So and so did it, why shouldn't I? And that's the beginning of a long downhill slide.

Now, in this instance, whatever his motive—and I don't charge him with any moral turpitude, improper motives—but the fact is that Mr. Meese engaged in actual misconduct by violating the rule that a public official must not act on matters involving individuals with whom he is personally, financially involved.

One violation was the case of John McKean. Mr. Meese received a $40,000 loan from him, with no interest to be paid for a year, at a time when Mr. Meese—and we can all sympathize—was hard-pressed financially.

Then on July 13 action on filling a vacancy on the Postal Board of Governors, just shortly after the loan was received, is deferred so that Mr. Deaver and Mr. Meese can bring in a name.

Senator HATCH. Mr. Cox, your 15 minutes have elapsed. If you could summarize, we would appreciate it.

Mr. COX. Oh, I'm very sorry. Let me finish the statement of the McKean case, and then about four sentences more.

Senator HATCH. Certainly.

Mr. COX. Shortly later, and then again a short time later, Mr. Meese did act on the appointment of one to whom he was financially indebted, whether as trustee or as an individual doesn't matter; he is the one he dealt with and the one to whom he owes the money. Then he receives an additional loan, and a year later he is in arrears for 3 or 4 months on his interest; he and Mr. McKean—Mr. Meese and Mr. McKean—talk together on two subjects of conversation, according to the report of independent counsel, as I read it—one, Mr. McKean's desire for a full term on the Postal Board of Governors, and, two, Mr. Meese's need for a deferral of interest—the financial business of Mr. Meese and Mr. McKean's appointment are closely linked together. Nevertheless, Mr. Meese acts on that case.

One finds a similar pattern, Senator Hatch, which has been gone through here, in the case of Barrack, in the case of the officers of the Great American Savings Bank—somewhat different, because of the personal association, in the case of the Thomas loan, and a willingness to accept favors, when Mr. Meese gets his promotion in the Army, and then later asks that the commanding general of the reserve be reappointed, calls the Secretary of the Army, the Secretary of Defense, to throw his weight on that side.

The only three sentences I would add, Senator Hatch, are that to depart from the standard I have stated, by confirming Mr. Meese's nomination for Attorney General, would, I think send a devastating message through the Government. There are Government officials, as a former Director of Personnel of the SEC wrote some of the members of this committee, who have disciplined, suspended, or fired people, to quote him, for conduct that wasn't as bad as Mr. Meese's. The message to the attorneys in the Justice Department, as illustrated by the examples I gave earlier, would seem to be it's all right for you to sit on these cases involving people to whom you are financially obligated.

Then I think it goes on out. The standard that the Senate of the United States sets as to what is proper conduct in one who hopes to be Attorney General is going to be of influence all through our society.

And I think that to depart from the simple proposition I have stated—there is no doubt that that principle has been violated—would be a very serious blow both to conduct of people in Government and to confidence in Government. Thank you, sir.

[The following was received for the record:]

STATEMENT OF ARCHIBALD COX
BEFORE THE JUDICIARY COMMITTEE
OF THE U.S. SENATE IN OPPOSITION
TO THE CONFIRMATION OF EDWIN MEESE, III
TO BE ATTORNEY GENERAL

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear on behalf of Common Cause before the Judiciary Committee in opposition to the confirmation of Edwin Meese, III as Attorney General of the United States. I am Chairman of Common Cause, a citizens' organization of 250,000 members. I am also Carl M. Loeb University Professor Emeritus at Harvard University and a Visiting Professor of Law at Boston University. I have served in the U.S. Department of Justice as a young lawyer, as Special Watergate Prosecutor, and as Solicitor General of the United States.

Neither Common Cause nor I myself came lightly to the conclusion that we should oppose the nomination of Edwin Meese. Although we have often emphasized the constitutional responsibility of the Senate to investigate thoroughly and pass its own independent judgment upon a President's nominees, we also recognize that when a Cabinet post is involved, much can be said for deferring to the President's choice insofar as the grounds for possible objection lie in the realm of political philosophy or policies. We did not oppose Mr. Meese's confirmation until after the hearings last spring brought out such repeated violations of the ethical standards that should govern the conduct of government officials as to make it impossible to believe that he can both symbolize and ensure the honest, even-handed, and fair-minded administration of justice free from the taint of personal self-interest or prejudice. We then became convinced that Mr. Meese's record disqualified him from serving effectively as Attorney General, and that we should oppose his nomination. The intervening months have strengthened that conviction.

The reasons behind our conclusion that the Senate should not confirm Mr. Meese's nomination are best explained in five steps that I shall first state and then elaborate:

First. The Senate must make its own determination of the ethical propriety of Mr. Meese's conduct. The Report of the Independent Counsel does not pass judgment upon whether Mr. Meese's past conduct disqualifies him from being Attorney General.

Second. A public official must not mix personal financial affairs with the exercise of official power or influence. This is one of the clearest and most widely-accepted ethical standards governing the holders of public office.

Third. Edwin Meese, as shown by evidence detailed by the Independent Counsel, did mix the receipt of personal financial benefits with the exercise of the powers and influence of Counsellor to the President by acting upon matters involving persons who had given him financial assistance.

Fourth. To treat Edwin Meese as vindicated because there is no basis for criminal prosecution would abandon the familiar and long-accepted distinction between violation of criminal law and violation of the higher ethical standards that government officials should obey.

Fifth. For the Senate to repudiate the moral standard by treating freedom of criminality as sufficient for confirmation as Attorney General would have disastrous consequences throughout the government.

I

THE REPORT OF INDEPENDENT COUNSEL DOES NOT PASS JUDGMENT UPON WHETHER THE PAST CONDUCT OF EDWIN MEESE DISQUALIFIES HIM FROM BEING AN EFFECTIVE ATTORNEY GENERAL.

Jacob Stein, Esq. conducted a careful investigation into the charges that Edwin Meese had engaged in numerous improprieties as Counsellor to the President. Mr. Stein found "no basis" for criminal prosecution. That finding should put an end to accusations of criminality. It grossly misrepresents the Independent Counsel's Report, however, to say that it is a "vindication" of

Mr. Meese, or that it should remove all obstacles to his confirmation.

The Report does not constitute a "vindication" of Mr. Meese against charges of repeated ethical violations. It does not demonstrate his fitness to serve as Attorney General. Despite the request of Mr. Meese's counsel, Mr. Stein explicitly refused to say ". . . that the evidence does not substantiate the loose charges of moral turpitude against Mr. Meese" (Report, p. 2). Despite many other requests, Mr. Stein explicitly refused to make "an evaluation of Mr. Meese's fitness for public office" (Report, p. 3). He explained that neither of these questions was within his jurisdiction (Report, pp. 3-4), but expressed "an expectation that they will not remain unexplored by those who will strive to do so free from all bias and prejudice" (Report, p. 4).

II

A PUBLIC OFFICIAL SHOULD NOT MIX PERSONAL FINANCIAL GAIN WITH THE EXERCISE OF OFFICIAL POWER OR INFLUENCE.

Public officials cannot and should not live in a vacuum. They cannot and should not shut themselves off from those whom they know from past social intercourse or business, professional, or political advice. In making and recommending appointments and also in seeking and evaluating advice, public servants often necessarily rely upon impressions and judgments formed by experience outside of office. The reliance will become abuse if friendship or mutual advantage takes precedence over sincere pursuit of the public interest. Cronyism is an abuse. In this area, however, it is impossible to set down a hard-and-fast rule. Here we must rely upon the integrity, fair-mindedness and public spiritedness of elected and appointed officials and upon the judgments of the electorate.

Once personal material advantage enters the picture -- once money is involved -- the situation is altogether different. Then a rule can be formulated. Then one can judge objectively whether the ethical standard has been honored or breached. As a result of scandals in previous administrations two precepts that had long been honored by conscientious public servants became firmly established as general rules:

- Public officials should not accept personal financial favors from those who may seek appointments or may have other business with the government that either they or the use of their names may influence.
- If the proposed appointment or business of a benefactor unexpectedly comes before a public official, that official should stand aside.

High officials who violated these precepts have, upon discovery, been severely criticized and forced to resign. The country was shocked by revelations that a White House aide to President Truman had accepted expensive gifts such as a deep-freeze locker from "five-percenters" seeking to place government contracts for a contingent fee. Part of the major scandal involving the Bureau of Internal Revenue that developed in 1950-1951 as a result of the investigations of Senator Williams and Congressman King was that the Chief Counsel and former assistant head of the Bureau, and also the Assistant Attorney General for the Tax Division, had allowed themselves to be put under obligation by accepting expensive gifts and entertainment from men who turned out to be subject to investigation.

When it became known that Associate Justice Abe Fortas had accepted $20,000 from financier Louis Wolfson and a promise of annual payments, he was forced to resign from the Supreme Court even though Justice Fortas neither gave nor promised judicial or official favor nor intervened or promised to intervene on Wolfson's behalf.

When it became known that Sherman Adams, the senior White House aide to President Eisenhower, had accepted the present of a vicuna coat, the loan of an expensive oriental rug, and the payment of his hotel bills from Bernard Goldfine, a textile executive who had matters pending before other parts of the government, Sherman Adams was forced to resign, even though he had committed no crime. Senator Barry Goldwater, a leader in forcing Adams's resignation, succinctly stated a few years later: "There is much more to high standard of public officials than merely staying within the law. . . . It is a question for moral purity in public service."

These precepts were endorsed in Congress in slightly different language in a Concurrent Resolution adopted in 1958 at the time of the Sherman Adams affair (H.R. Con. Res. 175, 72 Stat. B12):

> Any person in Government service should:
>
> * * *
>
> 5. Never . . . accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties. (Emphasis supplied.)

The precepts have also been embodied in slightly different language in Executive Order 11,222, which forbids an employee in the Executive Branch to do anything that "might result in, or create the appearance of . . . giving preferential treatment to any organization or person" or of "losing complete independence or impartiality of action." A public official who accepts financial favors risks actually "losing complete independence or impartiality of action," for the reasons that Senator Paul H. Douglas so well explained (see p. 8 below). All the more plainly his acceptance of the favors creates that appearance. And surely one who accepts financial favors and thereafter participates in naming his benefactor to a government office engages in conduct "which might . . . create the appearance of . . . giving preferential treatment."

The importance of avoiding appearances that create distrust in government was eloquently stated by Senator Strom Thurmond during consideration of the Senate Code of Ethics:

> John C. Calhoun, who was from my home state of South Carolina, one of the great Senators to serve this body, ably defined this aspect of the public trust in an 1835 speech when he wrote:
>
> ". . . the very essence of free government consists in considering offices as public trusts, bestowed for the good of the Country and not for the benefit of an individual or party."
>
> * * *
>
> There is one thing my father told me when I started out in public life. He said, "You have got to appear right as well as be right." (125 Cong. Rec. 8047-8 (March 17, 1977), 125 Cong. Rec. 8349 (March 21, 1977).)

The reasoning behind these ethical standards is simple and straightforward.

First, the public is entitled to the independent judgment of officials whose impartiality cannot have been tainted by the receipt of financial benefits from those whose cases they must judge. The world is full of people who, like Bernard Goldfine, are happy to earn the acquaintance and the gratitude or good will of high government officials by doing them financial favors, not because they are seeking to induce some particular official action at the time but because some day and in some way the acquaintance of one of the powerful may help advance the benefactor's affairs. Their method and the danger were admirably stated by one of the most distinguished Senators in this century, Paul H. Douglas, in a valuable study of Ethics in Government (p. 44):

> Today the corruption of public officials by private interests takes a more subtle form. The enticer does not generally pay money directly to the public representative. He tries instead by a series of favors to put the public official under such a feeling of personal obligation that the latter gradually loses his sense of mission to the public and comes to feel that his first loyalties are to his private benefactors and patrons.

The government official is also bound to know that, if he accepts personal financial favors in his hour of need, then it will be hard for him, later -- if the occasion should arise -- to act upon a request of his benefactor wholly without some sense of obligation or gratitude. Senator Douglas went on to explain the point much more clearly than I can express it:

> What happens is a gradual shifting of a man's loyalties from the community to those who have been doing him favors. His final decisions are, therefore, made in response to his private friendships and loyalties rather than to the public good. Throughout this whole process, the official will claim -- and may indeed believe -- that there is no causal connection between the favors he has received and the decisions which he makes. He will assert that the favors were given and received on the basis of pure friendship unsullied by worldly considerations. He will claim that the decisions, on the other hand, will have been made on the basis of the justice and equity of the particular case. The two series of acts will be alleged to be as separate as the east is from the west. Moreover, the whole

process may be so subtle as not to be detected by the official himself.

The only assurance is to refuse the financial favor or if the gift were mistakenly accepted from one who seemingly could have no government business, to stand aside. That is what H.R. Concurrent Resolution 175, Executive Order 11,222 and the public morality behind them plainly require.

Second, even if the official could achieve complete impartiality of judgment, the sight of a government official approving for office or otherwise dealing on behalf of government with individuals who have done him financial favors undermines public confidence in the honesty and evenhandedness with which government is conducted. Free government cannot survive that loss of confidence.

Third, the sight of a government official approving for office or otherwise dealing on behalf of government with individuals who have done him financial favors sets a destructive example, inviting other government officials actually to use their offices for personal gain. Toleration of the appearance of linking personal financial advantage with government appointments is the beginning of a long downhill slide into major corruption, public cynicism, and the collapse of confidence in public justice. Little favors -- timely, well-placed telephone calls -- follow. Then bigger courtesies, outright preferences, and the scarcely-concealed sale of influence and the kickback and bribe.

In sum, the standard by which Mr. Meese should be judged is not new. The firm ethical principle forbidding a government official to exercise official power or influence on behalf of an individual or organization that has given him financial assistance was hammered out as a result of scandals in the Truman Administration involving White House aides Matthew Connolly and Harry Vaughn, Assistant Attorney General Lamar Caudle, and officials in the Bureau of Internal Revenue. There was more debate at the time of the Sherman Adams affair and the consideration of House Concurrent Resolution 175, 72 Stat. B12, quoted above. Still further deliberation took place in connection with the acceptance of gifts by Associate Justice Abe Fortas of the

United States Supreme Court. While the Watergate wrongs were of a rather different character, they too resulted in legislative actions strengthening the consensus that no official may accept financial favors and then act favorably on government business involving his benefactor. The principle applies regardless of whether the official thinks that he would have taken the same action even if he had not been under obligation. For the Senate now to judge the conduct of Edwin Meese by a different rule would be a long step backward, rejecting a hard-won consensus and opening the door to corruption on a major scale.

III

EDWIN MEESE, WHILE COUNSELLOR TO THE PRESIDENT, REPEATEDLY MIXED THE EXERCISE OF OFFICIAL POWER OR INFLUENCE WITH PERSONAL FINANCIAL AFFAIRS.

The Report of Independent Counsel contains a wealth of evidence, mostly undisputed, showing that Edwin Meese did mix the receipt of personal material benefit with the conduct of his official duties, in violation of the established ethical standard for government officials and also in violation of Executive Order 11,222. Independent Counsel concluded that there was "no basis" for a criminal prosecution based upon the evidence described above largely because there was no direct evidence that Mr. Meese made the appointments because of the financial favors, or that the favors were given with the express or implied understanding that Mr. Meese would assist in the appointments. But, as we have shown, the proof of a specific corrupt intent or actual influence upon official action is not an element of ethical misconduct. The ethical standard and the Executive Order are concerned with risk of improper influence and with the appearances that destroy confidence in both government and the individual concerned.

1. While enjoying financial favors from John McKean, Mr. Meese twice supported him for terms on the Postal Board of Governors.

In moving to Washington early in 1981 to serve as Counsellor to the President, Edwin Meese encountered substantial financial problems. On the advice of Michael Deaver, Deputy White House

Chief of Staff, he met with John McKean, President of an accounting firm, and in late June 1981 obtained an unsecured loan of $40,000 with interest payable "not less than annually." Apparently Mr. Meese had no previous personal or business contacts with Mr. McKean. Nevertheless, on July 13, 1981, when the filling of a vacancy on the Postal Board of Governors came before the four-member White House Senior Staff Personnel Committee, of which Mr. Meese was a member, decision was deferred, according to the notes of one participant, until Mr. Deaver and Mr. Meese came back with a recommendation. At a subsequent meeting held soon afterwards, Mr. Deaver proposed Mr. McKean. When James Baker III, a third member of the Committee, said that he did not know Mr. McKean, Mr. Deaver turned to Mr. Meese, saying, "You know him, Ed." Mr. Meese, whose direct knowledge of Mr. McKean apparently was still confined to their financial dealings, then affirmed that Mr. McKean would be a good person for the job, and the decision was made to choose him. Mr. McKean later thanked Mr. Meese: "I appreciate any role you've played in this" (Report, p. 127).

Independent Counsel concluded that these facts would not support a criminal prosecution because there was no evidence that Mr. McKean was interested in the position at the time he arranged the loan (Report, p. 146) or that "Mr. Meese sought Mr. McKean's assistance in obtaining a loan with the intention of promising him anything in exchange, or that Mr. Meese in fact initiated any action to propose Mr. McKean for the Postal Board" (Report, pp. 146-7). These findings may be freely conceded. Independent Counsel found only that Mr. Meese had not "initiated any action to propose Mr. McKean" (emphasis supplied). The fact that Mr. Meese actively supported Mr. McKean shortly after receiving the $40,000 loan stands unchallenged. So far as appears, Mr. Meese had no other direct knowledge of Mr. McKean when he assured Mr. Baker that he knew him and thought him a good choice. There is no reason to draw inferences about Mr. Meese's motives in supporting Mr. McKean upon such slender personal knowledge. As explained by Senator Douglas in the passages quoted above, neither observers nor the one receiving such a financial benefit and then acting in a matter affecting his benefactor can be sure of the part played by reciprocity. Vital ethical standards were violated by Mr. Meese's prompt support of a man to whom he was in debt for financial assistance.

On December 28, 1981, Mr. Meese turned to Mr. McKean for another $20,000 loan.

In September 1982, while Mr. Meese was in default in the payment of interest on the first loan, Mr. McKean wrote Mr. Meese a letter saying that he was interested in a new full nine-year term on the Postal Board that would become available in December. Mr. McKean added: "With your help I can continue this [work]" (Report, p. 133). Mr. Meese testified that he could not remember the letter (Report, p. 133). In early November Mr. McKean sent Mr. Meese copies of bills showing that his accrued interest totalled $12,000. The two met on November 8 to discuss the problem of interest payments. The written agenda for the meeting also called for the men to discuss Mr. McKean's desire to serve for a longer term on the Postal Board. Mr. McKean did agree to defer Mr. Meese's interest payments until 1983. Whether they also discussed Mr. McKean's desire to have Mr. Meese's help in obtaining a new, full term on the Postal Board of Governors is left chiefly to inference from the agenda. Supporting that inference is the fact that Mr. Meese did recall that on some occasion Mr. McKean told him that he was interested in a longer term on the Postal Board of Governors and Mr. McKean recalled a conversation, which he said might have been on November 8, in which he asked and Mr. Meese agreed to support him for the longer term.

One week later Mr. McKean's renomination to the nine-year post was approved by the Senior Staff Personnel Committee. Mr. Meese supported the nomination (Report, p. 135).

In this instance Independent Counsel found no basis for prosecution because --

> There is no direct evidence that there was any connection between McKean's willingness to continue to forgo interest until 1983 and Mr. Meese's willingness to support him for a longer term on the Board. (Report, p. 147, emphasis supplied.)

A decent sense of the ethical obligations of a public official forbade such support for a personal financial benefactor regardless of any conscious or even unconscious causal connection in the official's mind. Mr. Meese gave that support, whatever his state of mind.

The support was also a patent violation of Executive Order 11,222 without regard to Mr. Meese's state of mind. The order forbids an employee in the Executive Branch to do anything that "might result in, or create the appearance of . . . giving preferential treatment to any organization or person" or of "losing complete independence or impartiality of action." For Mr. Meese to support Mr. McKean for the full term on the Postal Board of Governors just after Mr. McKean had both requested Mr. Meese's support and agreed to Mr. Meese's further deferring interest payments already overdue, indisputably "might . . . create the appearance of . . . using public office for private gain" of "giving preferential treatment" and of "losing complete independence or impartiality of action."

2. Mr. Meese mixed the receipt of personal financial benefit with the exercise of official power and influence by joining in approving Thomas Barrack for a Presidential appointment after Mr. Barrack had relieved him of his financial embarrassment by accomplishing a favorable sale of his California home.

In June and July 1982 two facts conjoined:

(1) Thomas J. Barrack, a California lawyer and real estate developer, made known his interest in a post in the federal government.

(2) Edwin Meese's financial difficulties were increasing because a buyer had not been found for his California house that had been on the market for a year and a half.

Pendleton James, who had been Director of the Office of Presidential Personnel, was a friend of both Mr. Meese and Mr. Barrack. He had been discussing federal posts with Mr. Barrack for some months. By late July 1982 he knew of Mr. Barrack's desire for a federal job. He also knew by early August of Mr. Meese's financial difficulty because of the difficulty in selling the house. With knowledge on both points, on August 8. 1982, Mr. James, who had just left the White House, asked Mr. Barrack to help arrange a sale of the house for Mr. Meese, who in fact could also help Mr. Barrack obtain the federal job. Within a month, Mr. Barrack had worked out a complicated sale of the house to a builder who had worked with him. In fact, Mr. Barrack put up the $70,000 down payment first as a loan but later as a gift. Mr. Barrack also paid other costs and thus "contributed . . . approximately $83,000 in connection with the house" (Report, p. 203).

Within a week after the closing of the sale, Mr. Barrack was in Washington for interviews arranged by Mr. James at the Presidential Personnel Office. He met with Mr. Meese, with whom he had previously talked only by telephone. After the meeting Mr. Barrack wrote to Mr. Meese saying in part, "Again, I am very grateful for your counsel and encouragement . . . ." (Report, p. 210) Mr. Meese could not remember the meeting until shown the note, and then could not remember what was talked about. Mr. Barrack, although he had come to Washington and spent the previous day in interviews about federal employment, asserted that the subject was never mentioned during his meeting with Mr. Meese. He thought it likely that the counsel for which he had thanked Mr. Meese related to a possible move to New York.

On October 27 Mr. James wrote to five Cabinet Secretaries urging Mr. Barrack's qualifications for a high level position. He also said --

> I should mention that Ed Meese knows Tom and I'm sure also would endorse my strong support. (Report, p. 212)

"Ed Meese" knew "Tom" only as the benefactor who had arranged the sale of his house.

Mr. James sent Mr. Meese a copy of this letter to five Cabinet Secretaries, and also told Mr. Meese of his efforts to get Mr. Barrack into the Administration in an accompanying note. Mr. Meese said that he did not remember seeing the note or the copy of the letters. Two weeks later, while Mr. Barrack was in Washington for interviews with Cabinet Secretaries, Mr. and Mrs. Meese and Mr. Barrack dined together. At Thanksgiving the Meeses stayed at the Barracks' house in California. On December 2, Mr. Barrack attended a birthday party for Mr. Meese.

Early in December Mr. Barrack took a post in the Interior Department under Secretary Watt, but he appears to have either continued or soon resumed the search for a higher level government appointment. On February 14, 1983, a White House Personnel Office memorandum came before the four-member Senior Staff Personnel Committee stating that Secretary Baldridge of the Commerce Department had requested that Mr. Barrack be named Assistant Secretary of Commerce for Trade Development. Mr. Meese joined in approving the request despite his knowledge that he was obligated to Mr. Barrack for relieving his financial distress.

Independent Counsel found that "Mr. Meese did not violate any federal criminal statute in connection with Mr. Barrack's recommended appointment" (Report, p. 225), but the grounds of the finding do not exonerate Mr. Meese from the charge of ethical improprieties heretofore condemned in other public officials. Independent Counsel rested heavily upon the absence of "direct evidence that . . . Mr. Meese promised to support or use his influence on behalf of Mr. Barrack" (Report, pp. 223-4, emphasis supplied). Acting favorably upon a matter involving Mr. Barrack was wrong for a public official who had received Mr. Barrack's financial help, with or without the promise. It was wrong even if there was "no direct evidence that Mr. Meese's non-veto of Mr. Barrack's appointment to this job was based upon his earlier receipt of assistance from Mr. Barrack" (Report, p. 225). For reasons explained by Senator Paul Douglas in the passage quoted above, it is futile to probe for actual motivation -- except in criminal cases. The message that observers are bound to read into the sequence of events involving Mr. Barrack -- Mr. James's going to a man interested in a government appointment in order to get financial help for Mr. Meese, followed by the use of Mr. Meese's name to help get Mr. Barrack a job, then followed by Mr. Meese's joining in approving his benefactor as an Assistant

Secretary -- is that private financial assistance for White House officials is a path to favorable governmental decisions.

3. While enjoying financial favors from Edwin Thomas that he failed to disclose as required by the Ethics in Government Act, Mr. Meese selected Mr. Thomas to become Assistant Counsellor to the President.

On January 7, 1981, Edwin Thomas, a close friend of the Meeses, loaned Mrs. Meese $15,000 to buy stock in Biotech Capital Corporation, a company headed by a close friend of Mr. Thomas. No due date nor interest rate was mentioned. No interest was ever paid. Mr. Meese approved accepting the loan. Later that month, Mr. Meese offered Mr. Thomas a position as Assistant Counsellor to the President, a position Mr. Thomas accepted.

Mr. Thomas and Mr. Meese were long-time associates. Viewed in isolation the Meeses' acceptance of the interest-free loan of $15,000 from Mr. Thomas might perhaps seem to be no more than an indiscretion flowing from poor judgment and at most a technical violation of 5 U.S.C. 7351 (prohibiting the acceptance of gifts from a subordinate) and Executive Order 11,222. But the incident does not stand in isolation. The loan was one of a series of financial favors that Mr. Meese accepted from individuals who he would appoint or would support for federal office, including Mr. McKean and Mr. Barrack who were not old friends.

The incident must also be viewed in the context of Mr. Meese's financial disclosure reports made under the Ethics in Government Act of 1978. Mr. Meese did not report the Thomas loan in 1981, 1982 or 1983, even though the Act explicitly requires disclosure of every liability in excess of $10,000. These were plain violations, though found not to be criminal because there was insufficient evidence of unlawful intent.

Mr. Meese's explanation of the failure to make disclosure was that "it had never occurred to him or 'registered' in his mind that a loan such as this was the kind of thing he was required to include on an SF 278." (Report p. 75) That it "never occurred to him" to disclose receipt of a sizeable financial favor and the resulting debt to an individual whom he was appointing to work under him in the White House exhibits an extraordinary indifference to the purposes of the required financial disclosure and the need to avoid both actual and apparent conflicts of interest.

4. While enjoying favorable treatment on several hundred thousand dollars in loans from the Great American First Savings Bank, Mr. Meese supported the appointments of several officers of the Bank.

Prior to President Reagan's election in 1980, the Meeses had two loans from Great American, totalling $120,000, which were secured by the first two deeds of trust on their La Mesa, California home. Mr. Meese noted that when he purchased his La Mesa home, "he went directly to Great American for financial assistance in the purchase of his house, since four officers of the Bank at the time -- Messrs. Luce, Schmidt [the person Mr. Meese primarily dealt with on his loans], Sandstrom and Gray -- had all served with him in the Reagan [California] administration" (Report, pp. 152-3).

In January 1981, Mr. Meese had two loans outstanding from Great American and was about to negotiate two more loans to finance purchasing a home outside Washington, D.C. Mr. Meese telephoned Edwin Gray, who had been Vice President and Director of Public Affairs at Great American prior to 1980 (when he took a leave of absence), to offer him a position as Deputy Assistant to the President. Mr. Gray, who had previously expressed an interest in a White House position, accepted. After returning to the Bank in August 1982, Mr. Gray was appointed in early 1983 Chairman of the Federal Home Loan Bank Board, with Mr. Meese's strong support.

Mr. Meese obtained the third (bridge) loan from Great American in February 1981 for $132,000, secured by a third deed of trust on his California home. This was to cover the down payment on his new Virginia home and other related expenses and was due in full a year later.

Also in February 1981, Great American made a fourth loan to Mr. Meese, secured by a first deed of trust on the Virginia home, for $150,000. The total debt was now $402,000. Anticipating an early sale of the California home, the Bank deferred for a "reasonable period" payments due on the first two loans. Thus because the Bank had deferred this debt and had structured the third loan so that no payments were due prior to 1982, the only Bank obligations the Meeses had to meet in 1981 were the interest payments on the mortgage on their Virginia home. Nonetheless, they failed to make any payments until December 1981.

On June 18, 1981, Gordon Luce, Chairman of the Board and Chief Executive Officer of Great American, was named to the President's Commission on Housing. Mr. Meese apparently took part as a member of the Senior Staff Personnel Committee in approving Mr. Luce. Later in 1982 Mr. Meese approved Mr. Luce's appointment as an Alternate Delegate to the United Nations General Assembly.

On October 14, 1981, Mr. Meese, who was now even more in arrears on his Virginia mortgage payments, approved Marc Sandstrom, the Bank's Executive Vice President and General Counsel, to be a recess appointee to the Board of Directors of the Legal Services Corporation. A few months later Mr. Sandstrom was formally nominated to the Board.

Around the same time, Clarence Pendleton, a member of the Bank's Board of Directors, was nominated to be Chairman of the United States Commission on Civil Rights, a position he assumed several months later. Mr. Meese had supported his nomination, but said he was unaware of Mr. Pendleton's affiliation with Great American.

Until rescued by Mr. Barrack's sale of his California house in September 1982, Mr. Meese's financial situation deteriorated. He became more and more dependent on the Bank's willingness to defer his obligations. In 1982, Great American began trying to obtain payments (which it had deferred) on the first two loans secured by the Meese's house in La Mesa. In February 1982, the Bank informed Mr. Meese by letter that he owed $11,499.84. Mr. Meese did not respond.

Because the third (bridge) loan secured by the La Mesa house, which was due in full in February 1982, also had not been repaid, the bank decided to modify its agreement with Mr. Meese, extending the original note. Repeated requests by the Bank in February, March and April to sign a Modification Agreement extending the loan until June went unanswered. Then, later in April, the Bank decided to extend the bridge loan until August and provide a fourth loan of $21,000 to cover overdue payments on both the Virginia and California properties and to be secured by a fourth deed on the La Mesa property. In May the Meeses accepted the extension on their third loan and the additional loan.

Aside from the additional loan made by Great American to cover past payments due, Mr. Meese failed to make mortgage payments on his two homes from February until September, when his California home was sold.

The Independent Counsel concluded that "despite the various degrees of support Mr. Meese gave to the appointments of Messrs. Luce, Gray, Sandstrom and Pendleton, the evidence does not warrant the finding that such support was connected to the Bank's treatment of the Meeses" (Report, p. 185). The Independent Counsel's Report "found no evidence that Messrs. Luce, Gray, Sandstrom and Pendleton were involved materially, if at all, in the Meeses' financial dealings with the Bank." The Bank officials in fact may have not interfered in the Bank's treatment of Mr. Meese. But that does not change the fact that Mr. Meese placed himself in a position where he was repeatedly asked to make official decisions that would affect the careers of individuals who could wield influence over his precarious financial plight. Mr. Meese repeatedly failed to remove himself from situations where his impartiality was clearly threatened by his personal financial status. Here, again, he violated Executive Order 11,222.

The special relevance of these incidents to Mr. Meese's fitness to be Attorney General is demonstrated by a simple example. Suppose that an Assistant Attorney General had financial relations with a bank paralleling those of Mr. Meese with Great American, and the Assistant Attorney General was then called upon to decide whether to authorize legal actions against high officers of the bank. Any lawyer sensitive to the necessity of avoiding conflicts of interest would immediately disqualify himself. His failure to disqualify himself or failure to reveal his connections would lead to the strongest criticism if not disciplinary action.

5. Mr. Meese knowingly accepted apparently preferential treatment in his promotion to Colonel in the Army Reserve, and helped General Berkman, who played a principal role in his promotion, obtain reappointment as Chief of the Army Reserve.

Edwin Meese, while in California, had been a member of the U.S. Army Active Reserve, but in 1977 he retired. In June 1981, while Counsellor to the President, Mr. Meese addressed the annual meeting of the U.S. Army Civil Affairs Association. General William Berkman, the Chief of Army Reserve, was also addressing the meeting. While there, Mr Meese met his long-time acquaintance, Colonel Joseph Sullivan, who was General Berkman's program and liaison officer. Mr. Meese told Colonel Sullivan that he would be interested in returning to active status.

Colonel Sullivan then worked out a series of complicated steps necessary to return Mr. Meese to active status. An Army Inspector General's Report issued in 1983 concluded that applicable laws and regulations were misapplied, violated or ignored in changing Mr. Meese's status. The Inspector General's Report showed that the irregularities included the creation of a position especially for Mr. Meese.

"In another attempt to assist Mr. Meese" (Report, p. 258), Colonel Sullivan then directed inquiries to see whether an educational requirement that Mr. Meese had failed to complete could be waived in order to permit his promotion to the rank of Colonel. Colonel Sullivan first pressed the Secretary of the Army, John Marsh, to send a letter drafted by Colonel Sullivan to the promotion board requesting a waiver. Mr. Marsh refused.

Then, as a result of Colonel Sullivan's efforts, the Deputy Chief of Staff for Personnel, Lieutenant General Max Thurman, wrote a memorandum on Mr. Meese's options, concluding that constructive educational credit could be granted to Mr. Meese by General Berkman and the Director of the Industrial College of Armed Forces, but advising against doing so that year. General Thurman recommended waiting so that "constructive credit for Mr. Meese could be accomplished as part of 'an orderly piece of work,' and a 'regular and normal affair.'" (Report, p. 267) General Thurman, who showed this memorandum to General Berkman, told the General that he recommended against giving constructive credit at that time "because of the risk that the matter would become publicly known, and would give the appearance of preferential treatment to Mr. Meese." (Report, p. 267)

Secretary of the Army Marsh sent the memorandum to Mr. Meese. Secretary Marsh also testified that he telephoned Mr. Meese to call attention to the memorandum and asked whether Mr. Meese had read it. Although this call surely should have raised a red flag, Mr. Meese, according to Secretary Marsh, said that he intended to take no position and wanted to stay out of the matter. Under the circumstances, Mr. Meese's reply can only lead to the inference that Mr. Meese was content to accept the military promotion appearing to result from preferential treatment. (Mr. Meese said that he did not recall the memorandum and he also could not recall speaking to Secretary Marsh on this subject.)

General Berkman then approved the constructive credit for Mr. Meese in early November. Afterwards, General Berkman hand-carried the request document to Admiral Narmi, the Director of the Industrial College of Armed Forces, who also approved it. Mr. Meese was later promoted to Colonel. In March 1984, several months after the Inspector General's Report concluded that his return to active duty violated the regulations, Mr. Meese retired from the active reserve. However, he retained his Colonelcy.

Around the end of October, General Berkman, whose tour of duty as Army Reserve Chief was expiring in June 1983, indicated his interest in a second term. At about the same time that the constructive credit necessary for Mr. Meese's promotion was granted, Mr. Meese telephoned Defense Secretary Caspar Weinberger to recommend General Berkman for another term and also spoke with Army Secretary Marsh to support General Berkman. Mr. Meese explained his recommendation to the Independent Counsel chiefly by saying he had heard good things about General Berkman from persons whose names he could not recall. General Berkman was reappointed. The Independent Counsel concluded that Mr. Meese's telephone call to Secretary Weinberger may have played a part in the decision.

The Independent Counsel concluded that no prosecution was warranted because he "found no direct evidence that Mr. Meese took action favorable to General Berkman in return for something done for Mr. Meese by General Berkman . . . ." (Report, p. 280) Again, we do not challenge the Independent Counsel's conclusion. Nonetheless, Mr. Meese -- indifferent to the appearance of exchanging his government influence for private gain -- went out of his way to support General Berkman's reappointment, during the period when he was seeking a promotion under General Berkman's command.

IV

TO TREAT EDWIN MEESE AS VINDICATED BY INDEPENDENT COUNSEL'S REPORT IS TO ABANDON THE FAMILIAR AND VITAL DISTINCTION BETWEEN FREEDOM FROM CRIME AND OBSERVANCE OF THE ETHICAL STANDARDS THAT SHOULD BIND PUBLIC OFFICIALS.

There is a long and widely recognized distinction between the proscriptions of the criminal law and the ethical standards that should be honored by public officials. Individuals guilty of ethical shortcomings have been forced from office even though there was little or no basis for prosecution, as shown by the familiar instances of Presidential Aide Sherman Adams, Supreme Court Justice Abe Fortas, and National Security Adviser Richard Allen. Senator Goldwater, who took the lead in pressing for Adams's resignation, some years later declared --

> There is much more to [the] high standard [required] of public officials than merely staying within the law.

* * *

> It is up to public officials to prove their innocence of moral stain, not up to the public to prove their guilt. It is a question for moral purity in public service.

William Safire, a White House Aide under President Nixon, wrote on March 29, 1984 in connection with Mr. Meese's nomination:

> Mr. Meese ~~should~~ should withdraw because he made mistakes that must not be assumed as right; because whatever the explanation, the pattern that emerged of lenders who were patronage recipients must be treated as unethical; because a course of conduct improper on its face cannot go without some political consequences.
>
> Mr. Meese may not be guilty, but he is not blameless; the charges may not lead to indictments, but they are not trivial. He could remain a useful White House counselor -- no mieskeit, he -- but he would not be a credible Attorney General.

Similarly, on December 31, 1984 the Los Angeles Times observed:

> There may indeed be nothing illegal about a government official conferring public awards on those who have done him private favors, but, unproscribed or not, such actions are ethically indefensible.

Recent editorials in other newspapers from coast to coast expressed essentially the same view -- The Buffalo News, for example, The Virginian-Pilot, The Charlotte Observer, The Cleveland Plain Dealer, the Kansas City Times, The Des Moines Register, the Austin American-Statesman, the Arizona Daily Star, and The Seattle Times. Opposition on the grounds of cronyism was expressed by the Chicago Tribune.

The settled distinction between criminal and unethical conduct is also widely acknowledged outside the realm of government. Individuals charged with the trust of expressing a fair and impartial judgment for the benefit of others are not free to pass judgment where they have accepted financial favors or otherwise come under obligation. The president of a bank would not tolerate a loan officer who approved a large commercial loan to a realty company which had bought the loan officer's house in order to relieve his financial embarrassment. A newspaper editor would not send out to interview a controversial figure a reporter who had received from the same man an interest-free loan without due date. If the reporter repeatedly turned in favorable stories about individuals who had done him financial favors, without making full disclosure, the editor would not even keep him on the payroll, much less promote him, even though there was no direct proof of quid pro quo.

V

FOR THE SENATE TO REPUDIATE THE ESTABLISHED MORAL STANDARD BY TREATING FREEDOM FROM PROSECUTABILITY AS SUFFICIENT FOR CONFIRMATION AS ATTORNEY GENERAL WOULD HAVE DISASTROUS CONSEQUENCES THROUGHOUT THE GOVERNMENT.

To abandon the settled moral standard for a rule that says the President's nominee for Attorney General should be approved whenever there is no basis for criminal prosecution would have disastrous consequences. The Attorney General is our highest law enforcement officer. He must symbolize the fair-minded, impartial, sensitive but impersonal administration of justice. He has more opportunity to set the ethical tone of an Administration than any official other than the President. An individual cannot convincingly symbolize fair-mindedness, impartiality, and freedom from personal interest if he himself has repeatedly accepted material favors and then used his official position in a way that helps his benefactors. The force of the precedent would be felt throughout the government.

1.

Consider first the impact within the Department of Justice. Attorneys in the Department are constantly making recommendations and decisions concerning the bringing of suits, the compromise of pending suits, and the prosecution or abandonment of appeals. Tax cases run from simple defense of alleged wrongful collections to collecting civil penalties for fraud to criminal prosecution. Many other cases call for selection over a similar range of possibilities. When a file is first brought to an individual attorney in the Department, only he is likely to know whether he is disqualified. Suppose now that a lawyer in the Tax Division receives a file dealing with alleged income tax delinquencies of the president of a savings and loan association. The central question is whether to sue for penalties for income tax fraud.

The association holds a large mortgage on the lawyer's home. The lawyer, being financially hard-pressed, is in default on the mortgage payments. Recently, the bank has been generous in overlooking defaults. The lawyer has never dealt with its president personally. He needs another extension. Should he act on the case? To act would not be a crime. The lawyer knows or should know that most of his colleagues would stand aside as required by the pertinent regulations. But he would also know -- if Mr. Meese were confirmed -- that the new Attorney General, while in almost exactly the same situation on his debt to the Great American First Savings Bank, had supported the appointment of a Bank official to a federal post without disclosing his obligation to the Bank. The lawyer would also have every reason to suppose that the Senate saw no impropriety. If he followed the obvious parallel, if he followed Attorney General Meese's example, he would not disclose his personal financial involvement with the bank but would decide whether the United States should sue the bank president for fraud.

Perhaps the lawyer recommends, or makes the decision, that no penalties be sought. Later the facts are disclosed. Should the Assistant Attorney General in charge of the Tax Division take disciplinary steps if there is no proof that the lawyer acted in bad faith? He could have no confidence that Attorney General Meese would approve a reprimand or suspension.

The example is not the figment of wild imagination. The Department's lawyers are constantly called upon to make recommendations or to decide whether to authorize criminal prosecutions, civil actions or appeals. Every now and then a lawyer finds on his desk a case involving someone to whom he is indebted or someone he knows. He may even receive requests for favors. In the past, no lawyer has doubted his obligation to stand aside.

2.

The repercussions of abandoning the precept that a public servant must not allow his personal financial affairs to become linked to exercise of governmental power or influence by acting in matters affecting individuals who have assisted him financially would reach far beyond the Department of Justice. To say that acceptance of such favors, even when the donors later receive favorable intervention by the recipient, is no barrier to confirmation as Attorney General because there is no prosecutable crime, would license the offer and receipt of such financial favors followed by official action on the donor's requests throughout the government. It would say that Sherman Adams, who committed no prosecutable crime, should not have been forced to resign.

Sherman Adams was, and Edwin Meese is, a high White House official. But the license would run on a smaller scale to the tens of thousands of officials constantly engaged in making decisions ranging from the letting of multi-million dollar contracts, to appointing junior personnel, to granting or denying claims for social security benefits. Presently, Executive Order 11,222 forbids government officials to act on any matters involving individuals or organizations to whom they may owe some personal obligation -- if only a debt of gratitude for a financial favor. Harry Pollack, Director of Personnel at the Securities and Exchange Commission for 17 years, has recently written Senators to say: "I had occasion to recommend the disciplining, suspension and/or firing of individuals for violation of the SEC's Conduct Regulation, for infractions in many cases of a lesser severity than those that involved Edwin Meese." Personnel officers in other departments and agencies must have had the same experience. For them to stop enforcing the regulation -- to abandon the moral standards embodied in the Executive Order -- would quickly destroy the morale of the public services and also the public's confidence in the impartiality and integrity of government. Yet, how could a government personnel officer or higher official continue to take any disciplinary action in such cases if the Senate or the United States has endorsed the principle that one who, as a high White House aide, has repeatedly violated the same regulation and moral standard is fit to be

Attorney General because the evidence falls short of showing that he committed a crime? On the ground that the same standards do not apply to the really powerful officials? Or to the President's friends?

The danger of eroding both morale and public confidence is not fanciful. Before the case of Sherman Adams, there were similar favors bestowed upon two of President Truman's aides. Investigations in the late 1940s and early 1950s shook the Bureau of Internal Revenue, the Reconstruction Finance Corporation, and the Maritime Commission. By the searchlight of publicity, by both Congress and Executive Order, by the promulgation of ethical standards, and by their enforcement, both morale and public confidence were improved. The Senate should not step back.

3.

Senator Strom Thurmond has explained as well as anyone the public importance of the ethical standards set by the Senate -- set, we submit, not only for the Senate but also for the Senate to use in passing upon specific cases:

> It is our solemn duty to set an example for honesty and integrity in our Nation. If the Congress, the President, and the judiciary do not bear this responsibility, then, our national leadership will cease to be a leadership based on institutional trust and respect. (125 Cong. Rec. 8047 (March 17, 1977)).
>
> * * *
>
> The Members of Congress are among our top leaders. If we do not set the standards for the people of this country to follow, who is going to set the standards? To whom can the man on the street look for proper standards of behavior and conduct? To whom can people on the street look to emulate in their life and conduct, especially in public office? (125 Cong. Rec. 10047 (April 1, 1977))

Earlier, Senator Paul H. Douglas, in a time shaken by other scandals, pointed out that "there is another and even more compelling reason why we should raise our governmental actions to a higher ethical plane. That is because of the powerful example set by public officials." The example of the Attorney General will be more powerful than any other.

Organized society depends upon a wide network of obligations that cannot be enforced by criminal punishment but that are honored, must be honored, by most of us if free society is to survive. To tell men and women to forget such moral obligations and feel free to say, "The law does not require me to do that, therefore I won't do it," would destroy the trust and confidence upon which we all depend. For a young reporter to fabricate a fascinating story about drug abuse is not criminal. Is the fabrication henceforth to be acceptable? Suppose that an employee of a realty company is charged with finding parcels of land that his employer may buy and sell at a profit. He finds acreage that offers extraordinary profit and therefore buys it for himself. Should it henceforth be tolerated because it is not a crime? The appointed Administrator of a decedent's estate invests $100,000 from the estate in his own business venture, believing that the investment is sound. Such conduct has long been regarded as a breach of trust. It is rarely a crime. Are we therefore to say that henceforth such conduct is acceptable? A businessman gives the Federal Bureau of Investigation a false account of the activities of an associate with whom he has bitterly quarreled. Are we henceforth to say that such fabrications are acceptable if the witness neither took an oath nor put the statement in writing, and therefore committed no crime? One's spontaneous statement to all these questions is "No, of course not." Yet affirmative answers are the inevitable logical consequence of espousing the proposition that one is fit to be Attorney General because the ethical derelictions with which he is charged have been found not to be prosecutable as crimes.

In summary, the essential issue before the Senate Judiciary Committee and the Senate can be shortly stated. The Report of Independent Counsel does not resolve the question of whether Mr. Meese's conduct as Counsellor to the President violated ethical standards so seriously as to disqualify him from becoming Attorney General. Independent Counsel explicitly denied requests to pass judgment either upon the charges of unethical conduct or upon Mr. Meese's fitness to be Attorney General.

Nor can the Senate responsibly defer to the President's judgment upon whether Mr. Meese's conduct, while Counsellor to the President, violated established ethical standards and Executive Order 11,222 so plainly and so often as to disable him from performing the Attorney General's high responsibility of both symbolizing and ensuring fair-minded, even-handed and sensitive administration of justice untainted by personal favor, gratitude or other obligation. Senators have not infrequently thought that they should not oppose a Cabinet appointment because critical of the nominee's political or legal philosophy. Common Cause does not oppose Mr. Meese's confirmation on that ground. There are many highly conservative lawyers who would bring distinction to the office of Attorney General and inspire the highest morale and professional standards throughout the Department. Possibly, a Senator might think that he should not seek to pass judgment on the professional competence, reputation or experience of a nominee. That point seems arguable, but we do not press it here. We do submit, however, that the Constitution puts upon the Senate of the United States the full and independent responsibility of deciding whether a nominee can be expected to conform to the ethical standards befitting public officials, especially those charged with the administration of justice.

Mr. Meese enjoyed financial favors, which he followed with the exercise of governmental power in favor of his benefactors. In the past, such conduct has long been condemned as grossly unethical, even if there was no proof of a causal connection. For the Senate to confirm Mr. Meese on the ground that Independent Counsel found no basis for criminal prosecution would therefore assert that, in passing on the fitness of a nominee for the Nation's chief law officer, the Senate is indifferent to ethical violations -- provided only that the nominee has committed no crime. More particularly, the vote to confirm Mr. Meese would say not only to thousands of government officials and employees but people everywhere:

> We, United States Senators, think that anyone in public office should feel free to accept large financial favors that might not otherwise come to him. Don't worry that those who do you a favor may later look for government appointments or have business with government that you may affect. Don't even worry about later participating in their appointment, or their receipt of other governmental benefits. We, as Senators, see

> nothing wrong in this. Just be sure not to commit a crime.

Not just the confirmation of Edwin Meese but the moral code of the Senate is at stake.

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
President

John W. Gardner
Founding Chairman

February 5, 1985

The Honorable Strom Thurmond
218 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Thurmond:

As you know, last Thursday I appeared before the Senate Judiciary Committee to present the views of Common Cause on the nomination of Edwin Meese III to be Attorney General of the United States. After a fifteen minute presentation summarizing our views, I spent nearly two hours responding to numerous questions from Committee members.

After I had completed my testimony and left the Committee room, Senator Hatch, as part of a colloquy with the next witness, sharply criticized Common Cause and a Common Cause report entitled The Case Against Edwin Meese III For Attorney General: A Review of the Independent Counsel's Report. More specifically, Senator Hatch suggested that in my presentation before the Committee I had distanced myself from that study. According to a review of the C-SPAN broadcast of the hearings, in criticizing Common Cause Senator Hatch said, for example, that "it was a great thing today for Mr. Cox to come in and not follow that report", and "he didn't come in here and back up his report", and that my testimony "ignored this report for the most part." For reasons which I do not understand, Senator Hatch, who chaired the Committee's proceedings during my testimony, did not see fit to extend to me the fairness and the courtesy of raising his concerns about Common Cause and our report while I was present. If Senator Hatch was genuinely doubtful about whether I supported the report, he could easily have inquired. Senator Hatch, in fact, did not ask me one single question during my appearance before the Committee.

Because I was not given the opportunity to respond directly to the statements by Senator Hatch with which I strongly disagree, I believe that it is now very important for me to have the opportunity to clarify the Committee's record. Senator Hatch's assertion to the contrary notwithstanding, I did not merely lend my name to the Common Cause report; I was directly involved in its preparation. I believe that the Common Cause study presents a fair and accurate summary of the factual findings of the Independent Counsel's Report. I am in complete agreement with the conclusions of the Common Cause study. It is unfair and inaccurate to assert that I disassociated myself from the report in my testimony before the Committee. My testimony before the Judiciary Committee was based in large part on the Common Cause report and in no way represented any disagreement with, repudiation of, or backing away from the Common Cause study. I could not have possibly presented the full report in the fifteen minutes available. Because the report was already available for study I thought it more important to select certain points for emphasis.

I request that a copy of this letter and a copy of the Common Cause report, along with a copy of my written testimony, be placed in the record of the Committee's consideration of Mr. Meese's nomination.

Sincerely,

Archibald Cox

Archibald Cox
Chairman

cc: Senator Joseph Biden
Senator Orrin Hatch

The Case Against Edwin Meese III For Attorney General

A Review of the Independent Counsel's Report Prepared by Common Cause

ACKNOWLEDGMENTS

This Review was prepared by Michal Freedman, Associate Director of the Issue Development staff of Common Cause, working with Archibald Cox, Jean Cobb, Elise Garcia, Florence Graves, Stephen Hitchner, Julie Kosterlitz, Janet Leno, Ann McBride, Ginny Sassaman, Steve Seitz, Fred Wertheimer, and Roger Witten.

December 1984

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In January 1984 Edwin Meese III was nominated to be Attorney General of the United States. In March, as a consequence of information revealed in the press and during the Senate Judiciary Committee hearings on the Meese nomination, Attorney General William French Smith initiated a preliminary investigation of possible criminal charges against Mr. Meese. Such an investigation is required before asking for the appointment of an Independent Counsel under the Ethics in Government Act. Concerned that the inquiry might be too narrow, Judiciary Committee Chairman Strom Thurmond (R-SC) and Joseph Biden, Jr. (D-DE), ranking minority member of the Committee, asked Attorney General Smith to conduct a comprehensive investigation of Mr. Meese. The next day, Mr. Meese asked for the appointment of an Independent Counsel. Several days later, after Mr. Smith, in accordance with the Act, had requested that a panel of judges from the United States Court of Appeals appoint an Independent Counsel, the court selected Jacob Stein, Esq., a well-known lawyer in private practice, "to investigate any allegation or evidence of violation of any criminal law by Mr. Meese."

Mr. Stein investigated 11 charges against Mr. Meese. They included allegations that Mr. Meese had accepted financial favors in connection with helping individuals to obtain federal jobs, that he had willfully filed false financial disclosure statements, and that he had improperly obtained a promotion in the U.S. Army Reserve.

In late September 1984, the Independent Counsel's Report was released. The Report concluded that there was "no basis" for indicting Mr. Meese on criminal charges. President Reagan immediately hailed the report as a "vindication" of his counsellor. Mr. Meese said he was "very happy" with the Report. Mr. Meese's lawyers, E. Robert Wallach and Leonard Garment, declared that the Report's "exhaustive" inquiry should end "suspicions" and that it would be "grossly unfair" to deny Mr. Meese "the benefit of the favorable outcome." The White House response and the accompanying publicity created the impression that Mr. Meese had been cleared of all wrongdoing and that no legitimate hurdle remained to prevent his confirmation as Attorney General of the United States.

The Independent Counsel's Report*/ does not constitute a "vindication" of Mr. Meese against charges of repeated ethical violations. It does not demonstrate his fitness to serve as Attorney General. Despite the request of Mr. Meese's counsel, Mr. Stein explicitly refused to say ". . . that the evidence does not substantiate the loose charges of moral turpitude against Mr. Meese." He also explicitly refused to make an "evaluation of Mr. Meese's fitness for public office." (3) He explained that neither of these questions was within his jurisdiction.

These are not merely technical distinctions. There is a marked difference between indictable crimes and violations of the ethical standards long applicable to public officials. A finding that there is no basis for prosecuting Mr. Meese for criminal misconduct is not enough to demonstrate that he has the ethical sensitivity and judgment required of an Attorney General.

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*/ The words "Independent Counsel" will be used in this Review, as they are in the Report, to refer to the Independent Counsel and his staff. Also, page references for quotations from the Report are set forth in parentheses following the quotations.

The evidence summarized by the Independent Counsel, far from vindicating Mr. Meese, clearly shows that he repeatedly acted in violation of the ethical standards that should have governed his conduct, and that he is therefore unfit to be Attorney General.

I

The Ethical Standards Required of an Attorney General of the United States

Choosing an Attorney General of the United States is one of the most important appointments to be made by a President and confirmed by the Senate. The Attorney General is the chief legal officer of the nation, its highest law enforcement official, and, aside from the Supreme Court Justices and the President, the government official with the greatest responsibility for upholding the Constitution and federal laws. It is the Attorney General who is responsible for advising the President and the heads of all other executive departments on matters of law. It is the Attorney General who bears responsibility for ensuring that the law is applied evenly, impartially, and without regard for the position, power, or party of any of the individuals involved. And it is the Attorney General who has a greater opportunity than anyone other than the President to set the ethical tone of an Administration by both his personal conduct and his advice.

Archibald Cox, Chairman of Common Cause, formerly Solicitor General of the United States, and the first Watergate Special Prosecutor, stresses this point: "The Attorney General must symbolize the highest standards of honor, integrity and freedom from self-interest in the performance of public office. He, more than any other individual, must give the American people confidence that he regards -- and is requiring other officials to regard -- public office as a public trust." No one can effectively serve those functions who, even though not guilty of a crime, has left the appearance of repeatedly mixing government appointments with his private financial affairs.

An executive order and federal regulations applicable to all government employees -- not merely the nation's highest officials -- require that public office should not be used, or appear to be used, to serve private ends. Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," which has been in effect since 1965, prohibits actions

> . . . which might result in, or create the appearance of . . . using public office for private gain; . . . giving preferential treatment to any organization or person; . . . losing complete independence or impartiality of action; . . . or . . . affecting adversely the confidence of the public in the integrity of the Government. [Emphasis added.]

Moreover, White House officials are expressly instructed, by regulation, to "conduct themselves so as to exemplify the highest standards of integrity . . . [and] avoid any action . . . which might result in, or create the appearance of . . . [l]osing complete independence or impartiality . . . ." 3 C.F.R.§100.735-4. [Emphasis added.] Federal regulations go on to state that

> It is equally important that each employee [of the Executive Office of the President] avoid becoming involved in situations which present the possibility, or even the appearance, that his official position might be used to his private advantage." 3 C.F.R. § 100.735-8. [Emphasis added.]

The reasons for the uniform prohibition against a public official's acceptance of financial favors creating the appearance of a loss of impartiality are plain:

First, even the most scrupulous of individuals who receives financial favors while in public office cannot be sure, even subjectively, that his later official action favoring the donor will not be influenced by gratitude -- if not by the hope of future gain. To the extent that his judgment is so influenced, the public will be cheated.

Second, the sight of a government official approving for office or otherwise dealing on behalf of the government with individuals who have done him financial favors undermines public confidence in the honesty and evenhandedness with which government business is conducted. In the words of Executive Order 11222 it "create[s] the appearance of . . . losing complete independence or impartiality of action."

Third, the sight of a government official approving for office or otherwise dealing on behalf of government with individuals who have done him financial favors sets a destructive example inviting other government officials actually to use their offices for personal gain.

A man who has often violated Executive Order 11222, federal ethics regulations, and the basic standards they embody should not be Attorney General of the United States.

II

Selected Areas of Inquiry Described in the Independent Counsel's Report

The Independent Counsel investigated 11 sets of allegations against Mr. Meese. (See Appendix I for a list of all the inquiries conducted by the Independent Counsel.) This section reviews facts shown by the Independent Counsel's Report in six areas that especially bear on Mr. Meese's fitness for office.

1. The relationship, if any, between the loans made to Mr. Meese and the appointment of John McKean to the United States Postal Board of Governors.

Allegations: In the words of the Independent Counsel's Report: "In June and December 1981, John R. McKean made two loans to Mr. Meese totaling $60,000. It has been alleged that there was a connection between the loans and Mr. McKean's nomination, in October 1981, to an unexpired term on the U.S. Postal Board of Governors, as well as his nomination, in January 1983, to a full term on that Board." (108)

Facts Shown by the Independent Counsel's Report: In late June 1981, while serving as Counsellor to the President and as one of four members of the Senior Staff Personnel Committee, the group making final recommendations for Presidential appointments, Mr. Meese received an unsecured loan for $40,000 from John McKean, with interest due "not less than annually." Mr. Meese treated the loan on his Financial Disclosure Statement as one made by Mr. McKean, not knowing the exact sources available to Mr. McKean from which the money came. (Mr. McKean was actually the trustee or middleman for the loan, which came from private investment funds made available to his firm.) Mr. Meese had met with Mr. McKean, who was President of John R. McKean, Accountants, P.C., on the advice of White House Deputy Chief of Staff, Michael Deaver. Mr. Deaver, who was also discussing his personal finances with Mr. McKean and was about to receive his own loan arranged by Mr. McKean as part of a tax shelter Mr. McKean had suggested, was another member of the Senior Staff Committee.

On July 13, 1981, the Senior Staff Committee met to make a recommendation for a vacancy on the Postal Board of Governors. The list of names submitted to the Committee by the White House Office of Presidential Personnel (OPP), the office responsible for initially identifying potential nominees for presidential appointments, did not include the name of John McKean for the vacancy. Although the meeting agenda indicated a "decision" would be made, the decision was deferred, according to the notes of one participant, "until Deaver and Meese come back with a recommendation."

At a subsequent meeting, Mr. Deaver suggested John McKean for the position. According to two persons attending the meeting, after Mr. James Baker III, White House Chief of Staff, indicated he did not know Mr. McKean, Mr. Deaver turned to Mr. Meese and said, "You know him, Ed." Mr. Meese affirmed that he did know Mr. McKean, and that he would be a good person for the job. A tentative, if not final, decision to select Mr. McKean was then made.

The Report states: "None of those present at the Senior Staff meeting recalled any discussion of the fact that Mr. McKean was Mr. Deaver's accountant or Mr. Meese's accountant, nor of knowing that Mr. McKean had just arranged a loan for Mr. Meese or was about to arrange a loan for Mr. Deaver. None recalled Mr. Meese suggesting that he should 'recuse' himself." (124-5)

About one month after Mr. Meese supported Mr. McKean's nomination, they talked by telephone. Mr. McKean recalled telling Mr. Meese that he had learned that his appointment was going through and said words to the effect, "I appreciate any role you've played in this." (127)

A few months later, on December 28, 1981, Mr. Meese called Mr. McKean at his home and asked if he could borrow an additional $20,000, a matter they had discussed earlier. Mr. McKean arranged to have a check for this amount drawn that day on his personal business account, which was later reimbursed by his firm.

In June 1982, Mr. McKean sent Mr. Meese a bill for $3,900 in interest due on the first $40,000 loan through December 1981, to which Mr. Meese did not respond. Mr. McKean did not press him for a time after late July because of the death of Mr. Meese's son.

In September, while the interest was still unpaid, Mr. McKean informed Mr. Meese by a letter (which Mr. Meese did not recall) that he was interested in a full, nine-year term on the Postal Board that would become available in December. In the letter Mr. McKean stated, "With your help I can continue this [work]." (133)

In early November 1982, Mr. McKean sent Mr. Meese copies of bills showing that his accrued interest then totalled $12,000. At a meeting between the two men held on November 8, Mr. McKean agreed to defer Mr. Meese's interest payments until 1983. The agenda for the meeting called for the two men also to discuss at the same time Mr. McKean's desire to serve for a longer term on the Postal Board. The Report states that Mr. Meese did recall one occasion on which Mr. McKean told him that he was interested in a longer term on the Postal Board of Governors, but Mr. Meese did not give the date. Mr. McKean recalled a conversation that he says might have occurred on November 8, in which he asked and Mr. Meese agreed to support him for the longer term.

On November 17 -- one week later -- Mr. McKean's renomination to the nine-year post was approved by the Senior Staff Personnel Committee. Mr. Meese told the Independent Counsel that he assumed that "Mr. McKean's name later came up at a Senior Staff Personnel Committee meeting, and that he supported the nomination . . . ." (135)

Interest on the McKean loans to Mr. Meese continued to accrue, totalling $20,100 by June 1983. In September, two months after a story appeared in The Washington Post which linked the McKean loan to Mr. McKean's appointments, Mr. Meese secured a bank loan for $80,000 to pay off his loan from Mr. McKean. In February 1984 -- just before the Senate hearings on Mr. Meese's nomination for Attorney General began -- Mr. Meese sent Mr. McKean a check for the remaining $3,340 interest due Mr. McKean.

Conclusions to be drawn from the Independent Counsel's Report: The Independent Counsel concluded that the above facts would not support the bringing of a criminal prosecution against Mr. Meese, chiefly because there was no evidence that "Mr. Meese solicited a loan from Mr. McKean with the express or implied intention of assisting him in obtaining a government position, or that Mr. McKean offered to arrange a loan in the expectation or understanding that Mr. Meese would so assist him." (145) We do not and need not challenge that conclusion. The undisputed facts stated by the Independent Counsel show that Mr. Meese violated not only the most elementary ethical standards but also Executive Order 11222.

A high public official must not accept personal financial favors. A high public official must not give or appear to give government positions in actual or apparent return for favors done for government officials, whether for the appointing officer or for one of his friends. Such conduct is ethically wrong, even if there is no criminal bargain for a *quid pro quo*.

Mr. Meese did accept very substantial favors from Mr. McKean, both in the unsecured loan with "interest due not less than annually" that Mr. McKean arranged and also in the foregoing of interest. Mr. Meese did join with Mr. Deaver in supporting the first appointment of Mr. McKean, knowing that he had received financial favors from Mr. McKean. Subsequently, when Mr. Meese was further indebted to Mr. McKean, he joined in approving a second appointment for Mr. McKean. This was plainly wrong and a clear violation of ethical standards. Supporting the appointments also violated a regulation specifically applicable to White House employees, directing that "each employee avoid becoming involved in situations which present . . . the appearance that his official position might [have been] used to his private advantage."

2. The relationship, if any, of Thomas Barrack's role in the sale of the Meeses' California home and his appointment to federal jobs.

Allegations: In the words of the Independent Counsel's Report: "In August 1982, Thomas J. Barrack, Jr., an attorney and real estate developer, assisted the Meeses in the sale of their La Mesa property. In mid-November 1982, Mr. Barrack accepted a non-Presidential appointment as Deputy Undersecretary of Interior. Shortly thereafter, he was offered and accepted a position as Assistant Secretary of Commerce for Trade Development, but later declined the position and left the government.

"It has been alleged that a connection existed between Mr. Barrack's federal appointments and his involvement, especially his financial involvement, in the sale of the Meeses' La Mesa house." (151)

Facts Shown by the Independent Counsel's Report: As of August 1982, the Meeses had been trying unsuccessfully to sell their La Mesa home for more than a year-and-one-half, a state of affairs causing them serious financial problems. The Meeses had failed to make payments on their California and Virginia houses for substantial periods and their Bank had mentioned the possibility of foreclosure on their California property. On August 8, 1982, Pendleton James, who had recently been Director of the Office of Presidential Personnel and was a friend of the Meeses, called his friend Thomas Barrack -- with whom Mr. James had been discussing possible federal employment -- to seek his assistance in selling the La Mesa property.

Mr. Barrack had never met Ed Meese, but after speaking by phone with Mr. Meese at least twice in early August, Mr. Barrack began arranging a complicated sale of the Meeses' California home involving Irv Howard, a builder who had worked with Mr. Barrack, and Ted Elkin, a close personal friend of Mr. Barrack and his "right hand man." On August 18, 1982, only 10 days after the first phone call, Mr. Barrack and Mr. Meese agreed on a purchase price of $300,000. Both the Howards and Meeses signed escrow instructions for the property. Mr. Howard had not yet seen the property.

A few days later, the Great American Bank notified Mr. Meese's representative on the sale that more money was needed to cover the four loans to Mr. Meese which had been secured by the property as well as other payments due on his Virginia house. Mr. Barrack was informed that an additional $7,500 was necessary to complete the deal. At the same time the Bank informed Mr. Barrack that it would provide the buyer with more favorable financing terms than previously offered. Irv Howard agreed to the higher price with the new financing offered by the Great American Bank.

Mr. Barrack loaned his assistant Mr. Elkin $70,000 to be used toward the down payment. Shortly after September 1, 1982, the day of the closing, Mr. Elkin reimbursed Mr. Howard with Mr. Barrack's money for the down payment Mr. Howard had made. Mr. Howard made only one payment on the mortgage, after which Mr. Elkin -- with money supplied by Mr. Barrack -- took over the mortgage payments. A few months later, Mr. Barrack cancelled the note for $70,000 to Mr. Elkin, making Mr. Elkin a gift of the money.

One week after the closing on the La Mesa home, Pendleton James arranged for Mr. Barrack to meet with several members of the White House Personnel Office. On this occasion Mr. Barrack also met Mr. Meese face to face for the first time. After the meeting, Mr. Barrack wrote Mr. Meese a note which concluded: "Again, I am very grateful for your counsel and encouragement and if I may be of any aid or assistance please call on me." (210) Mr. Meese did not recall what they discussed. Mr. Barrack told the Independent Counsel that the "counsel and encouragement" reference in the note was likely referring to his having told Mr. Meese about his possible relocation to New York City, something he said he was considering besides government service.

The next month, Mr. James arranged for Mr. Barrack to explore possible high-level government positions with five cabinet secretaries, each of whom received a letter from Mr. James which said, "I should mention that Ed Meese knows Tom and I'm sure also would endorse my strong support." (212) Mr. James sent a copy of this letter to Mr. Meese, asking, "Is there anybody else you think Tom should see when he is in Washington?" Mr. Meese did not recall the letter.

According to the Independent Counsel's Report:

> Mr. Meese stated that he could not recall when he learned that Mr. Barrack was interested in a federal position. He recalled that in August 1982, Mr. James told him that Mr. Barrack was someone Mr. James 'had tried' to recruit into the administration. However, Mr. Meese did not recall knowing that Mr. James was still engaged in such an effort. Mr. Meese told us that he might have known as early as the November 9, 1982 dinner [a dinner with Mr. Barrack that occurred the same day that Mr. Barrack interviewed with Transportation Secretary Lewis and HUD Secretary Pierce, and the day before he was to interview with Interior Secretary Watt and Energy Secretary Hodel], although he recalled no conversation about it. He thought he probably knew at Thanksgiving that Mr. Barrack was going to work for Secretary Watt. (220)

On December 1, 1982, Mr. Barrack began work as Deputy Undersecretary of Interior. One month later, according to the Report,

> In January 1983, Mr. Barrack told Secretary Watt that he had done what he could for the Secretary on his personal staff, and that it made no sense for him to continue there . . . . Commerce Secretary Baldridge had an Assistant Secretary position open and recruited Barrack, with Secretary Watt's blessing, to go to Commerce. (220-1)

Concerning Mr. Meese's role in Mr. Barrack's selection for the Commerce Department position, Mr. Meese told the Independent Counsel that "he assumed he raised no objection to this appointment . . . ." (222)

In May 1983, eight months after the purchase, Mr. Elkin sold the La Mesa property for $275,000, more than $30,000 below its purchase price. According to the Independent Counsel's Report, "Mr. Barrack contributed, through Mr. Elkin, approximately $83,000 in connection with the house -- $70,000 for the down payment and initial expenses and $13,000 for mortgage payments and other expenses." (203)

Conclusions to be drawn from the Independent Counsel's Report: Here again, the facts found by the Independent Counsel reveal clear insensitivity to the ethical standards required of a nominee for Attorney General. Mr. Meese knew that Mr. James had requested Mr. Barrack to help Mr. Meese in connection with the sale of his California house at a time when he (Mr. Meese) was in financial difficulty. Mr. Meese knew that Mr. Barrack rendered him important assistance in the sale. Mr. Meese knew that Mr. Barrack was someone Mr. James "had tried" to recruit into the

Administration. Mr. Meese had a copy of a letter from Mr. James telling him that he (Mr. James) was pushing Mr. Barrack for an important government appointment and giving Mr. Meese as a reference. Mr. Meese met Mr. Barrack twice in the fall while Mr. Barrack was in Washington, D.C. interviewing for federal employment. It is hard to see how Mr. Meese could have missed or not inquired about Mr. Barrack's interest in a government position.

Later, Mr. Meese, knowing that he had received substantial benefits from Mr. Barrack's efforts on his behalf, joined in approving the latter's appointment for a sub-Cabinet position. The Independent Counsel did not recommend prosecution because "there was no direct evidence that Mr. Meese's non-veto of Mr. Barrack's appointment to this job was based upon his earlier receipt of assistance from Mr. Barrack . . . ." (225) But here again Mr. Meese apparently did not reveal the conflict between his self-interest as the beneficiary of Mr. Barrack's assistance and his own duty as Counsellor to the President to see that government appointments were made uninfluenced by personal gratitude for financial assistance or other personal considerations. Nor did Mr. Meese recognize either the obvious risk he was creating of appearance of impropriety or the dangerous example he was setting for others by participating in the appointment of a man who had given him assistance in arranging the sale of his house when he was badly in debt. The public interest is bound to suffer unless the Attorney General is quicker to perceive the ethical violation in such interconnected dealings, even when there is no quid pro quo.

3. Mr. Meese's change of status from the retired Army Reserve to the Active Reserve and his later military promotion.

Allegations: According to the Report: "In July 1981, Mr. Meese's status in the U.S. Army Reserve was changed from Retired to Active. In early 1983, he received a promotion from Lieutenant Colonel to Colonel in the Reserve. In the spring of 1983, allegations appeared in the news media suggesting improprieties with respect to these actions, and suggesting that they somehow were linked to the nomination of General William Berkman in January 1983 to a second four-year term as Chief, Army Reserve." (254)

Facts Shown by the Independent Counsel's Report: In June 1981, Mr. Meese addressed the annual meeting of an army group. General William Berkman, Chief of Army Reserve, and Colonel Joseph Sullivan, General Berkman's program and liaison officer -- and a long-time acquaintance of Mr. Meese -- were both in attendance. A conversation between Mr. Meese and Colonel Sullivan brought out the fact that Mr. Meese was interested in returning to Active status in the Army Reserve. Thereafter Colonel Sullivan initiated actions leading to Mr. Meese's transfer to the Active Reserve. An Army Inspector General's Report issued in 1983 concluded that applicable laws and regulations were misapplied, violated or ignored in changing Mr. Meese's status. (Although not stated in the Independent Counsel's Report, the Inspector General's Report shows that the irregularities included the creation of a position especially for Mr. Meese.)

Colonel Sullivan was also the moving force in obtaining Mr. Meese's promotion to Colonel. Because Mr. Meese did not meet the educational requirements for promotion, the Deputy Chief of Staff for Personnel, Lieutenant General Max Thurman, wrote a memorandum analyzing whether constructive educational credit could be granted to Mr. Meese. In the memorandum dated November 1, 1982, General Thurman pointed out that such credit could be authorized jointly by General Berkman and the Director of the Industrial College of Armed Forces, but he advised against doing so that year. He outlined three approaches that could be taken. The first was to get constructive credit expeditiously for Mr. Meese. The second was to identify other individuals who might qualify for constructive credit so that Mr. Meese would not appear to be unique. And the third was to wait until the following year and pursue constructive credit in the "normal fashion." General Thurman recommended waiting so that "constructive credit for Mr. Meese could be accomplished as part of 'an orderly piece of work,' and a 'regular and normal affair.'" (267)

General Thurman showed this memorandum to General Berkman and told him that he recommended against giving constructive credit at this time "because of the risk that the matter would become publicly known, and would give the appearance of preferential treatment to Mr. Meese." (267)

Secretary of the Army Marsh was sent the memorandum and, according to his testimony, he sent it to Mr. Meese. Secretary Marsh also testified that when he called Mr. Meese about the Thurman memorandum, Mr. Meese said that he intended to take no position and wanted to stay out of the matter. Mr. Meese said that he did not recall the memorandum. Mr. Meese also could not recall speaking to Secretary Marsh on this subject; he could recall speaking about constructive credit with only Colonel Sullivan.

Despite the Thurman memorandum's adverse recommendation and General Thurman's statement to General Berkman that giving Mr. Meese constructive credit, if publicly known, would give the appearance of preferential treatment, within a few days General Berkman approved the constructive credit for Mr. Meese, with Colonel Sullivan hand-carrying the request document to General Berkman for approval. General Berkman then hand-carried it to Admiral Narmi, the Director of the Industrial College of Armed Forces, who also approved it. Mr. Meese was later promoted to Colonel. (Although not stated by the Independent Counsel's Report, Mr. Meese retired from the active reserve in March 1984 -- several months after the Inspector General's Report concluded that his return to active duty violated the regulations -- but he retained his Colonelcy and the attendant higher pension benefits.)

Around the end of October, General Berkman, whose tour of duty as Army Reserve Chief was expiring in June 1983, indicated his interest in a second term. Sometime after November 1 -- at about the same time that the constructive credit necessary for Mr. Meese's promotion was granted -- Mr. Meese spoke with Defense Secretary Caspar Weinberger and Army Secretary John Marsh to recommend General Berkman for another term. By mid-December, a decision had been reached to reappoint the General. Mr. Weinberger told Mr. Stein he remembers that Mr. Meese called to recommend that General Berkman be considered for appointment to a second term as Reserve chief. Mr. Meese says he also put in a good word for General Berkman with Army Secretary Marsh.

Although General Berkman had been Mr. Meese's Reserve commander more than five years earlier, the relationship between them, according to the Stein report, was "limited and professionally based."

Mr. Meese told Mr. Stein's investigators he recommended General Berkman because he had heard from Reserve officials that General Berkman was doing a good job, it was his impression that the Army Reserve had been enhanced under General Berkman and General Berkman had impressed him in a speech he gave. But the Stein report says Mr. Meese "could not recall the identities of . . . [the Reserve officials] or the date of the conversation." Among the factors the Independent Counsel concluded may have played a role in General Berkman's reappointment was the telephone call from Mr. Meese to Secretary Weinberger supporting General Berkman.

Conclusions to be drawn from the Independent Counsel's Report: The Independent Counsel "found no direct evidence that Mr. Meese took action favorable to General Berkman in return for something done for Mr. Meese by General Berkman . . . ." (280) Again, we do not challenge the Independent Counsel's conclusion. Nonetheless, Mr. Meese -- indifferent to the appearance of exchanging his government influence for private gain -- went out of his way to support General Berkman's reappointment, during the period when he was seeking a promotion under General Berkman's command.

In addition, these central facts remain: The Secretary of the Army states he telephoned Mr. Meese to call his attention to a memorandum advising against offering constructive credit to Mr. Meese at that time. Instead the memorandum recommended waiting until the following year so that the constructive credit would be part of "an orderly piece of work," and a "regular and normal affair." Nonetheless Mr. Meese allowed others to press his cause and was content to accept the military promotion appearing to result from his White House position.

4. The relationships, if any, of certain loans made to Mr. Meese and the appointment of Gordon Luce, Edwin Gray, Marc Sandstrom, and Clarence Pendleton.

Allegations: The Great American First Savings Bank (Great American) made three loans to the Meeses in 1981 and 1982. Four officials of Great American received Presidential appointments in the Reagan Administration. In the words of the Independent Counsel's Report: "Questions have been raised as to whether there was any connection between the willingness of Great American to grant these loans to Mr. and Mrs. Meese and the appointments of its officials to federal positions. Questions have also been raised as to whether the willingness of the Bank to forego timely payments played any role in the appointments." (150)

Facts Shown by the Independent Counsel's Report: Prior to President Reagan's election in 1980, the Meeses had two loans from Great American, totalling $120,000, which were secured by the first two deeds of trust on their La Mesa, California home. Mr. Meese noted that when he purchased his La Mesa home, "he went directly to Great American for financial assistance in the purchase of his house, since four officers of the Bank at the time -- Messrs. Luce, Schmidt [the person Mr. Meese primarily dealt with on his loans], Sandstrom and Gray -- had all served with him in the Reagan [California] administration." (152-3)

In January 1981, Mr. Meese telephoned Edwin Gray, who had been Vice President and Director of Public Affairs at Great American prior to 1980, to offer him a position as Deputy

Assistant to the President, which he accepted. Mr. Gray had previously expressed an interest in a White House position. In early 1983, he was appointed Chairman of the Federal Home Loan Bank Board, with Mr. Meese's strong support.

Mr. Meese obtained a third (bridge) loan from Great American in February 1981 for $132,000, secured by a third deed of trust on his California home. This was to cover the down payment on his new Virginia home and other related expenses.

Also in February 1981, Great American made a fourth loan to Mr. Meese, secured by a first deed of trust on the Virginia home, for $150,000. The total debt was now $402,000. In anticipation of an early sale of the California home, the Bank decided to defer for a "reasonable period" payments due on the notes secured by the first and second deeds of trust on the La Mesa property. According to the Independent Counsel's Report, the Bank had accorded such deferments to other customers.

On June 18, 1981, Gordon Luce, Chairman of the Board and Chief Executive Officer of Great American, was named to the President's Commission on Housing. He was approved by the Senior Staff Personnel Committee, of which Mr. Meese was a member. In the fall of 1982 Mr. Luce was appointed an Alternate Delegate to the United Nations General Assembly, with the approval of Mr. Meese and other Senior Staff Committee members.

On October 14, 1981, Mr. Meese, as a member of the Senior Staff Committee, approved Marc Sandstrom, the Bank's Executive Vice President and General Counsel, to be a recess appointee to the Board of Directors of the Legal Services Corporation. A few months later Mr. Sandstrom was formally nominated to the Board.

Around the same time, Clarence Pendleton, a member of the Bank's Board of Directors, was nominated to be Chairman of the United States Commission on Civil Rights, a position he assumed several months later. Mr. Meese had supported his nomination, but said he was unaware of Mr. Pendleton's affiliation with Great American.

In 1982, Great American began trying to obtain payments (which it had deferred) on the first two loans secured by the Meese's house in La Mesa. In February 1982, Mr. McHenry, the manager of Great American's loan servicing department, informed Mr. Meese by letter that he owed $11,499.84. Mr. Meese did not respond to the letter.

Because the third (bridge) loan secured by the La Mesa house, which was due in full in February 1982, also had not been repaid, the bank decided to modify its agreement with Mr. Meese, extending the original note. Repeated requests by the Bank in February, March and April to sign a Modification Agreement extending the loan until June went unanswered. Then, later in April, the Bank decided to extend the bridge loan until August and provide a fourth loan of $21,000 to cover overdue payments on both the Virginia and California properties and to be secured by a fourth deed on the La Mesa property. In May the Meeses accepted the extension on their third loan and the additional loan.

"On June 17, 1982, Mr. McHenry wrote to Mr. Meese demanding payment and, for the first time, mentioning the possibility of foreclosure. He received no response." (166) Aside from the additional loan made by Great American to cover past payments due, Mr. Meese had failed to make mortgage payments on his two homes from February until September, when his California home was sold.

Conclusions to be drawn from the Independent Counsel's Report: The Independent Counsel concluded that "despite the various degrees of support Mr. Meese gave to the appointments of Messrs. Luce, Gray, Sandstrom and Pendleton, the evidence does not warrant the finding that such support was connected to the Bank's treatment of the Meeses." (185) The Independent Counsel's Report "found no evidence that Messrs. Luce, Gray, Sandstrom and Pendleton were involved materially, if at all, in the Meeses' financial dealings with the Bank." Nonetheless, the ethical violation is clear: Mr. Meese participated in decisions to recommend individuals who he knew were high officials of Great American First Savings Bank for government appointments at a time when he had borrowed several hundred thousand dollars from the Bank on favorable terms, including forbearance of monthly payments on some of his loans, and in fact was in default on one of his loans.

5. The relationship, if any, of a $15,000 loan made to Mrs. Meese and the appointment of Edwin Thomas to federal jobs, as well as Mr. Meese's failure to include in his Financial Disclosure Statements the $15,000 loan made by Edwin Thomas to Mrs. Meese.

Allegations: In the words of the Report: "On January 7, 1981, Edwin W. Thomas [a friend of the Meeses] lent $15,000 to Ursula Meese. Mrs. Meese used the money to purchase stock in Biotech Capital Corporation on behalf of two of her children. It has been alleged that there was a connection between the loan and federal appointments obtained by members of the Thomas family.

> "Questions have also been raised regarding Mr. Meese's failure to report the $15,000 on his Financial Disclosure Form (SF 278) filed February 19, 1981 . . . or on the forms he filed in May 1982 . . . and May 1983 . . . although the loan was partially unpaid until June 1983 . . . ." (24)

Facts Shown by the Independent Counsel's Report: On January 7, 1981, just before President Reagan took office, Edwin Thomas, a close friend of the Meeses, loaned Mrs. Meese $15,000 to buy stock in Biotech Capital Corporation, a company headed by a close friend of Mr. Thomas. Mr. Meese recalled discussing the Thomas loan proposal with his wife, and approving the idea, probably in December 1980. Mr. Meese thought he probably offered Mr. Thomas the job as Assistant Counsellor to the President, also in December 1980. Mr. Meese said he knew as early as election day what role he would play in the new Administration and "never doubted that he wanted Mr. Thomas to be his assistant." (53) In late January, Mr. Thomas began working as Assistant Counsellor to the President, a position he held until February 1982, when he was appointed Administrator of the San Francisco Regional Office of the General Services Administration. (In the fall of 1982, Mr. Thomas' wife became an attorney-examiner with the Merit Systems Protection Board and his son took a job with the Department of Labor.)

After taking the position of Counsellor to the President, Mr. Meese filed financial disclosure reports, as required under the Ethics in Government Act of 1978. His first report, the draft for which he prepared himself, was filed in February 1981, six weeks after Mrs. Meese received the $15,000 loan from Mr. Thomas. Although the Act clearly requires disclosure of liabilities in excess of $10,000, neither this statement nor Mr. Meese's subsequent statements listed the loan as a liability.

Explaining his omission, "Mr. Meese told members of his staff and others at the White House that it had never occurred to him or 'registered' in his mind that a loan such as this was the kind of thing he was required to include on an SF 278." (75) Moreover, the Report characterizes Mr. Meese as showing a "lack of attention" to his Financial Disclosure Forms.

Conclusions to be drawn from the Independent Counsel's Report: Independent Counsel found "no direct evidence linking the offer of the loan, or the subsequent making of the loan, to Mr. Meese's offer of a job to Mr. Thomas." (72) Whatever his subjective motive, Mr. Meese did link by his actions the receipt by his wife of an undisclosed financial favor and the giving of a government job to the man who had done the favor. Surely -- in the words of Executive Order 11222 -- he became involved in a situation that presented the appearance of "losing complete independence or impartiality."

Not only does his conduct reflect marked indifference to ethical standards, but the Independent Counsel's discussion of Mr. Meese's failure to list the $15,000 loan from Mr. Thomas also shows him to be ignorant of a basic legal and ethical obligation of public officials.*/

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*/ The Independent Counsel's Report documents numerous other examples of Mr. Meese's failure to comply with the financial disclosure requirements of the Ethics in Government Act. The Report notes that during his first four years in office, Mr. Meese initially failed to list at least 20 items on the Financial Disclosure Forms he was required by law to complete.

6. Mr. Meese's receipt of payments by the Presidential Transition Trust.

Allegations: Questions were raised regarding whether Mr. Meese's acceptance of payments from the Presidential Transition Trust was lawful.

Facts Shown by the Independent Counsel's Report: The Presidential Transition Trust was established in August 1980 to raise money to fund the Reagan/Bush Planning Task Force, a group intended to engage in "pre-transition" activities such as identifying government positions to be filled. After the election, when the Trust was terminating, some funds remained in its treasury. With this remaining money, checks were distributed to several persons soon to be members of the Administration, including $10,000 to Mr. Meese clearly designated for "moving expenses." Mr. Meese deposited his check in his bank account on November 22, 1980.

In early December, according to Mr. McPherson, counsel to the Trust, Mr. Meese said that money was needed to pay the moving expenses of the people coming from California to Washington to work in the Administration. After Mr. McPherson learned that this might constitute a legal problem, he informed Mr. Meese, who agreed with him that the matter should be discussed with the Justice Department. According to the Independent Counsel's Report, Mr. McPherson explained that

> [He] received the oral opinion . . . that [the Justice Department] would probably consider payment of "moving expenses" by the Trust to prospective government employees to be a violation of 18 U.S.C. §209(a), a criminal statute barring payment or acceptance by any person of "supplementation of his salary as a government employee." [footnote omitted] Mr. McPherson said he reported this to Mr. Meese during December of 1980. Mr. Meese told Mr. McPherson not to pursue the matter

> further. At no time did Mr. Meese tell Mr. McPherson that he had received a check from the Trust for moving expenses in November and he had deposited it in his account on November 22, 1980." (344-5)

Mr. Meese said that he had no recollection of these conversations, but that he had learned from a source whom he couldn't recall that there might be "a problem" and asked "someone, probably Mrs. von Damm" (the office manager who later became White House Personnel Director) at the Trust to change trust records to reflect that his check was for "consulting fees," which he reported as income on his tax return and Financial Disclosure Form.

Conclusions to be drawn from the Independent Counsel's Report: Independent Counsel concluded that a criminal violation could not be established. We do not dispute this. But there is something disquieting about Mr. Meese's conduct when viewed in the light of Mr. Meese's insensitivity to ethical standards in other situations affecting his finances. Would a man sensitive to ethical standards who had received a $10,000 payment that he learned was "probably illegal" be content to keep the money and simply have the record changed to read "consulting fees?" Mr. Meese may have earned consulting fees. But surely in this difficult situation, an honorable man would want to return the money, submit a statement of the hours spent in consultation, and then obtain payment of his fee.

III

Mr. Meese's Failure to Recall Significant Events, Conversations and Documents

One of the striking features of the Independent Counsel's Report is the extent to which Mr. Meese claims to be unable to remember significant events or actions. The Independent Counsel's Report reflects a man who is not merely occasionally forgetful, but rather, if taken at his word, suffers from frequent lapses of memory concerning conversations, documents and events bearing upon the integrity of his conduct.

1. In connection with the charges involving Mr. McKean it was important to know to what extent Mr. Meese was aware of Mr. McKean's interest in a government position. When asked questions about documents, conversations or events that would indicate he was aware of this, Mr. Meese answered that he could not recall.

- o Mr. McKean recalled telling Mr. Meese that he had learned that his appointment was going through and said words to the effect, "I appreciate any role you've played in this." Mr. Meese did not recall this conversation, although he thought it probably occurred. (127)
- o In a letter from Mr. McKean to Mr. Meese dated September 14, 1982, Mr. McKean expressed his interest in the longer term on the Postal Board, and said, "With your help I can continue this [work]." When confronted with this evidence of his knowledge, Mr. Meese said that he did not recall receiving the letter. (133)
- o According to the Independent Counsel's Report, "Mr. Meese assumed that Mr. McKean's name later came up at a Senior Staff Personnel Committee meeting, and that he supported the nomination, but he had no recollection of this occurring." (135)

2. In connection with the charges involving Mr. Barrack, it was important to know to what extent Mr. Meese was aware of Mr. Barrack's efforts to secure a government position. When asked

questions about documents or conversations that would indicate he was aware of this, Mr. Meese repeatedly answered he could not recall.

- o According to the Independent Counsel's Report: "Mr. Meese had no recollection of Mr. Barrack's September 8 visit to his office [their first meeting occurring one week after the sale of Mr. Meese's home] until he found and reviewed the letter in his files. He did not recall what was discussed. or whether anyone else was present. He also did not recall if he knew Mr. Barrack had been interviewed by people in OPP [the Office of Presidential Personnel]." (210)

- o In a letter to several cabinet secretaries asking them to see Mr. Barrack, Mr. James wrote: "I should mention that Ed Meese knows Tom and I'm sure also would endorse my strong support." Mr. James sent a copy of the letter to Mr. Meese. According to the Report: "Mr. Meese did not recall the October 27 letter. He also did not recall knowing at this time that Mr. Barrack was interested in a federal position, or that Mr. James was seeking to obtain one for him." (214) He explained that he sometimes but not always read the contents of his "reading file" where a copy of the letter would have gone and that other staff read and filed the original.

- o According to the Report: "Mr. Meese stated that he could not recall when he learned that Mr. Barrack was interested in a federal position. He recalled that in August 1982, Mr. James told him that Mr. Barrack was someone Mr. James 'had tried' to recruit into the administration. However, Mr. Meese did not recall knowing that Mr. James was still engaged in such an effort. Mr. Meese told us that he might have known as early as the November 9, 1982 dinner [a dinner with Mr. Barrack that occurred the same day that Mr. Barrack interviewed with Transportation Secretary Lewis and HUD Secretary Pierce, and the day before he was to interview with Interior Secretary Watt and Energy Secretary Hodel], although he recalled no conversation about it. He thought he probably knew at Thanksgiving that Mr. Barrack was going to work for Secretary Watt." (220)

- o According to the Report: "Concerning his Senior Staff role in [Mr. Barrack's appointment to be Assistant Secretary of the Commerce Department] Mr. Meese said that he assumed he raised no objection to this appointment, but that he had no recollection of the matter." (222)

3. In connection with the charges involving Mr. Meese's Army Reserve status, it was important to know the extent to which Mr. Meese was aware that he could be receiving special treatment on his promotion and to know what his grounds were for favoring the reappointment of General Berkman. When asked questions about special treatment and the reappointment of General Berkman, Mr. Meese answered that he could not recall.

- Secretary of the Army Marsh, who recalled sending General Thurman's memorandum to Mr. Meese and later calling Mr. Meese about it, recalled that Mr. Meese simply wanted to take no position on it. However, "Mr. Meese had no recollection of receiving the memorandum. When he reviewed the original copy, which we had obtained, it did not refresh his recollection." (269) Mr. Meese also could not recall speaking to Secretary Marsh on this subject, stating that the only person he could recall talking to was Colonel Sullivan.
- Mr. Meese spoke with Secretaries Weinberger and Marsh to recommend General Berkman. Mr. Meese explained that he supported General Berkman in part because of recommendations of several Reserve officials. However, "Mr. Meese could not recall the identities of these individuals, or the date of the conversation." (275)

The Independent Counsel apparently regarded Mr. Meese's repeated lapses of memory concerning transactions of questionable ethical propriety as unimportant in deciding whether to seek an indictment, the truth of which would have to be proved beyond a reasonable doubt. In contexts other than a criminal investigation one might well be warranted in drawing adverse inferences from such repeated inability to answer key questions. But even if no adverse inference should be drawn about Mr. Meese's credibility, the lapses of memory surely confirm the charge of insensitivity to the ethical standards that apply to a Presidential Counsellor and future Attorney General. That a man with Mr.

Meese's public responsibilities may neglect some of his personal affairs is readily imaginable. That a man as busy as Mr. Meese may forget incidents seemingly unimportant at the time they occur in the course of his duties is also obvious. But anyone who is truly sensitive to ethical concerns immediately becomes alert and does remember, when names are mentioned or proposals are made that suggest the danger of mixing of personal affairs with public duties, conflicts of interest, or other improprieties.

A man whose sense of propriety forbade his receiving preferential treatment in a military promotion because of his being a Presidential Counsellor, would unquestionably recall a warning telephone call from the Secretary of the Army. He would come alert, and not forget, when the name of the man (Barrack) who arranged the sale of his house came up for appointment to the sub-Cabinet. Likewise, one with appreciation of the impropriety of appointing one's creditor (McKean) to office would come alert and remember when the name of the individual who had arranged a $60,000 loan came up for appointment before a government committee of which he was a member. He would remember a letter from that man asking him for help in obtaining the appointment -- if he had any sense of the impropriety of the request and the potential embarrassment if he had a hand in the appointment. Perhaps a man sensitive to ethical standards might forget once, but not on repeated occasions.

In short, even accepting the honesty and candor of Mr. Meese's statements of forgetfulness, they confirm the other evidence of unawareness of, or indifference to, ethical standards required of public officials.

CONCLUSION

We do not suggest that Mr. Meese should be denied confirmation simply because he made mistakes. We do submit that Mr. Meese's actions, though not determined to be criminal, do reveal that he is unfit to be Attorney General.

Confidence in the fairness and impartiality of the administration of justice is essential to a free government. Those who enforce the law must be free from personal interest. The Attorney General must be a symbol of these qualities, not only for the country but for other lawyers in the Department of Justice. Mr. Meese's record of violations of Executive Order 11222, applicable regulations and general standards of ethical conduct makes it impossible for him to be that symbol. He has accepted a promotion that gives the appearance of receiving preferential treatment after being alerted to the problem by the Secretary of the Army. He has failed to understand the wrong in approving for public office persons from whom he has accepted financial assistance. He has displayed an ignorance of the requirements of financial disclosure totally inconsistent with their purpose of revealing conflicts of interest.

An Attorney General can do more to set the ethical tone of an Administration than any other member of the Cabinet. Mr. Meese cannot now perform that function. How could Mr. Meese show by example or tell others that it is wrong to assist individuals in obtaining public office who have done one financial favors, or to accept financial aid or favors from government contractors or their officials, or to accept other preferential treatment?

The Department of Justice has the initial responsibility for investigating charges of wrongdoing against high government officials. Suppose that it were to develop, while Mr. Meese was Attorney General, that on numerous occasions some high official in the White House had supported individuals outside the government for important government positions after he had received unusual financial assistance from them or the organizations in which they held leadership positions. Could Mr. Meese, who has himself been the recipient of such favors, and participated in such appointments, be expected to press a vigorous investigation? Would a young lawyer in the Department of Justice to whom the allegations were referred recommend further investigation knowing that the Attorney General had been in just such a position?

Not infrequently the Department of Justice has the responsibility for investigating gifts made to government officials by government contractors. Could Mr. Meese be expected to see anything wrong in such conduct?

From time to time, attorneys of the Department of Justice are requested to do favors for friends, for political benefactors of an Administration, and for others in positions of influence. Often they have to choose between following high professional standards in the conduct of an investigation or litigation and resorting to unworthy tactics in order to prevail. No one can have confidence that Mr. Meese's example would steer them in the right direction.

In the end the question is very simple. The Independent Counsel did not charge Mr. Meese with a crime. Mr. Meese may have intended no wrong. His past conduct shows, however, that he is blind to the ethical standards and obligations required of a public official. He should not be confirmed as Attorney General.

Appendix I

A List of the Inquiries Concerning Edwin Meese III Conducted by the Independent Counsel

"The Office of Independent Counsel conducted eleven separate inquiries relating to Edwin Meese III. They were:

"1. Mr. Meese's failure to include in his Financial Disclosure Statements a $15,000 loan made by Edwin Thomas to Mrs. Meese.

"2. The relationship, if any, of certain loans made to Mr. and Mrs. Meese and the appointment of Edwin Thomas, Gretchen Thomas, Tad Thomas, John McKean, Gordon Luce, Edwin Gray, Marc Sandstrom, Clarence Pendleton, and Thomas Barrack to federal jobs.

"3. Mr. Meese's and his family's stock trading.

"4. Whether Mr. Meese obtained special treatment from government agencies for business entities in which he had a financial interest.

"5. Mr. Meese's change of status from the retired Army Reserve to the Active Reserve and his later military promotion.

"6. Mr. Meese's statements to the Subcommittee on Human Resources of the Committee on Post Office and Civil Service, House of Representatives, and the Senate Judiciary Committee, concerning Carter campaign materials.

"7. Mr. Meese's retention of cuff links given to him by the government of South Korea.

"8. Mr. Meese's receipt of payments by the Presidential Transition Trust and the Presidential Transition Foundation.

"9. Mr. Meese's reporting on his Financial Disclosure Statements of reimbursements for travel expenses.

"10. Mrs. Meese's receipt of funds from the William Moss Institute.

"11. Mr. Meese's connection, if any, with federal grants to Pepperdine University and American University."

Senator **Hatch**. Thank you, Mr. Cox. Senator Biden? Let's set a 15-minute rule so that everyone will be treated equitably.

Senator **Biden**. Thank you, Mr. Chairman. General, I do have questions. I apologize for being late. Secretary Weinberger and Secretary Shultz are in the Foreign Relations Committee, and a few other things——

Senator **Metzenbaum**. Name-dropper.

Senator **Biden**. Senator Metzenbaum just said "Name-dropper," but I consider you more important than that at this moment, and so what I would like to do is yield to my colleagues who have heard your testimony to give me a chance to get organized here.

Senator **Hatch**. Senator Metzenbaum?

Senator **Metzenbaum**. Mr. Cox, first let me express my appreciation, not as a Senator, but as a concerned American as to your involvement, continued involvement, in matters of public concern, and giving of your time and effort in a number of different areas. And I know the particular effort that you put into this matter.

I appreciate it; I think many people in the country do.

In regard to the standards of conduct, I would like to ask you: What should Mr. Meese have done differently, in your view, in connection with the two recommendations of Presidential appointments for Mr. McKean?

Mr. **Cox**. I think he should have taken himself out of any discussion of appointment for people to whom he was either indebted or people who had rendered him financial assistance, such as Mr. Barrack had rendered.

And I include in that people who are officers of a bank to which he is indebted.

If he doesn't take himself out, he is acting in a situation in which his judgment may be affected in ways he can't tell or anyone else could tell by his obligation. The only way to deal with that is to take yourself out of it, not to engage in the situation.

I see it as the same sort of thing as the trustee holding an estate. He may not put that money in his own company, even though he thinks it's an excellent loan. He just may not do it. It's not a case where you can act.

I think this runs all through the Government. So I think Mr. Meese's failure to recuse himself was the essential wrong. I think in the case of McKean, to discuss McKean's desire for a full term on the Postal Board of Governors, at the same time he discussed whether interest would be deferred, was itself a wrong. And, indeed, to accept the loan from one who was coming before the Presidential Personnel Board violated the regulations applicable to the White House that I was referring to earlier.

Senator **Metzenbaum**. In your opinion, does it make any difference whether they were McKean's funds, or whether they were the office funds, or whether they were Mr. Kupperberg's funds? Do you see any real distinction in connection with Mr. Meese's conduct as to whether or not they were actually Mr. McKean's dollars or he just was making the arrangements in connection with those dollars?

Mr. **Cox**. I don't think the character of what was behind Mr. McKean's dealing with Mr. Meese in terms of the money makes any difference whatsoever. To take my earlier example, the judge who sits on a case involving Sam Adams, for him to say, oh, it was Sam Adams' trustee that made me the loan, isn't going to make his conduct any more proper.

I think the same principle applies to Mr. Meese's situation.

Senator METZENBAUM. So when some on this committee and the Office of Government Ethics were making the point that they weren't Mr. McKean's funds, they were Mr. Kupperberg's funds, who provided for the extension of the loan, in your opinion that really has no particular relevance as to the propriety of Mr. Meese's acts.

Mr. COX. I must say, in reading the letter from the Office of Government Ethics, when I read that I found it incredible. I do find it incredible that anyone would say, oh, it doesn't matter, because Mr. McKean, with whom Mr. Meese dealt, was acting for another.

Senator METZENBAUM. In your view, what should Mr. Meese have done differently in connection with the recommendation of Mr. Barrack for Presidential appointment?

Mr. COX. I think Mr. Meese should not have acted when the recommendation of Mr. Barrack came up. I would also wish that Mr. Meese's name had not been included in the letters written by Pendleton James as someone who knew and would support Mr. Barrack.

But I don't mean in saying that I would wish that—I put it that way because there is no evidence stated in the report that Mr. Meese knew that was being done, except that he got a copy of those letters in his office. But there is no affirmative testimony that he read them.

Senator METZENBAUM. Do you think that Mr. Meese, if he hadn't recused himself, would have substantially bettered the situation, at least from the public perception, if he had made a disclosure to the others with whom he was sitting in that appointing group? Would that have ameliorated the situation, in your opinion?

Mr. COX. It would not have been entirely as bad. I don't think it would have been enough.

Senator METZENBAUM. How do you respond to Mr. Martin's argument that Mr. McKean did not give Mr. Meese something of value when he made the decision to waive payments due on the loan on two separate occasions?

Mr. COX. Well, I think he did. Certainly it's of value to me, if I am in arrears on interest on a debt and can't pay it, to have it extended. I don't see how anybody could see it in any other terms. It's something of value. I think I would not have suggested that it was a gift—that wouldn't have been the word I would use.

What I think it is in effect is a new loan. He says, all right, I won't demand payment now, I will defer it. In effect he is loaning the money back to Mr. Meese. And the 3 CFR—it's a long-number section, but it's applicable to Presidential employees—"An employee shall not accept any loan from a person who has interests which may be substantially affected by the performance or nonperformance of his official duty."

Mr. McKean's interest in getting a Government appointment certainly could be influenced by Mr. Meese, and Mr. Meese, as I say, would seem to me to have accepted a new loan with the amount of the interest, if you will. I would think it was also a thing of value, Senator Metzenbaum, from Mr. McKean, despite the fact that Mr. Meese knew at the very time that that was arranged that Mr. McKean was seeking a full term on the Board of Governors; he had written Mr. Meese, asking him for his support. It was also—the agenda indicated that it was discussed on that same day.

Senator **METZENBAUM**. Mr. Martin's analysis and conclusion in part is based upon the fact that there was no impropriety—or the claim that there was no impropriety—in regard to the McKean appointment because it was initiated by Mr. Deaver and not initiated by Mr. Meese.

Now, I have had some difficulty in comprehending the difference since he was a part of the appointing group.

Would you give me your own view as to whether there is any particular relevance or importance to who initiates the appointment, as long as the individual involved is a party to the decision.

Mr. Cox. I share your feeling, Senator. I find it unbelievable that anybody could think that it matters who spoke first.

Imagine what applying that rule through the Government would be. If I was not the first person to act on a file, recommending no prosecution, but I go along with it, knowing that that man is my creditor, that I owe him for some other financial help he has given me. Surely it is no answer for me to say, oh, I didn't initiate it. It seems to me what is being asserted here—I can't believe that Mr. Martin intends to generalize such a rule all through the Government employees of the United States. I really find it frightening.

Senator **METZENBAUM**. Mr. Martin also concluded that, in connection with the Barrack matter, that there was no appearance of impropriety in connection with Mr. Barrack's appointment, because it occurred 5 months after Mr. Barrack had been involved in the sale of Mr. Meese's house.

Would you care to comment on the relevance of whether it occurred 1 week or 2 months or 5 months after.

Mr. Cox. I don't think, considering the amount of aid that Mr. Barrack gave Mr. Meese in trying to sell the house for 18 months—he was very much up against it, in a way which I said before we can be sorry for, sympathize with him—but I don't think that 6 months or 5 months was anywhere near enough to say, oh, that's a thing of the past. It is also significant in that respect that Mr. Meese's connections with Mr. Barrack had multiplied. Mr. Barrack had been coming to his office at times when Mr. Barrack is talking about a Government job; they meet again in November at dinner, the Meeses and the Barracks; Mr. Meese goes and stays at Mr. Barrack's ranch at Thanksgiving; Barrack is at Mr. Meese's birthday party. This certainly would be calculated to keep the earlier transaction very much in the foreground.

Senator **METZENBAUM**. In regard to that appointment, the argument is made—the statement is made by Mr. Martin—and I think that was based upon representations of Mr. Meese's attorneys, and I am not challenging their representation—that there was no appearance of conflict or bias because Mr. Meese did not know about the financial contribution of Mr. Barrack, although he did know that he had been involved in finding a buyer instrumental in negotiating the price, instrumental in arranging the loan terms, and had otherwise been very much involved—but the argument is made, or Mr. Martin makes his conclusion saying that, since Mr. Meese did not know about the fact that Mr. Barrack had contributed $83,000 to the sale of the home, that there is some distinction.

Would you care to address yourself to that subject?

Mr. Cox. Well, I think, first, we should be clear on the facts, and if the fact is clear, that Mr. Meese did not know that Mr. Barrack had funded parts of the transaction, he did not know that Mr. Barrack apparently took a heavy loss from the transaction.

But the independent counsel did find that Mr. Barrack assisted the Meeses in respect that Mr. Meese did know about. He found the Howards to buy the property, negotiated the initial price, other terms of sale with Mr. Meese, negotiated both the financial sales price and the Howards' loan with the bank.

It was terribly important to the Meeses' financial condition that somebody do these things.

Great American Savings, if my memory is right, was beginning to talk about foreclosure. Mr. Meese went to Mr. Barrack, at the suggestion of Pendleton James, because he was in a jam through inability to sell the house.

And one shouldn't forget that Mr. Barrack didn't charge any commission or anything on that. And I think the independent counsel was quite right in saying we assume that the assistance that the Meeses received was something of value.

Senator METZENBAUM. And there can be no question about the fact that the Meeses understood there was something of value, because we know of Mrs. Meese's comment—he's the one with the halo around his head—so that when Mr. Barrack's appointment comes up before him, Mr. Meese is aware at that moment that Mr. Barrack has been very helpful, whether or not he knows of the $83,000 that Mr. Barrack had——

Mr. Cox. I think it's the knowing that he has been very helpful that is the reason why he should have disqualified himself. And his failure to understand, even now, you ought to disqualify yourself under these circumstances. The other day, if I heard it right, he said he didn't know that an attorney should disqualify himself from acting on a file that involved a man to whom he owed money or had helped him to his financial benefit.

It's perfectly clear that the attorney must take himself out. This is the essential thing.

Senator HATCH. Senator, your 15 minutes are up. Senator Biden would like to pursue that point, then I will turn to Senator Specter. Senator Biden.

Senator BIDEN. Can I just pursue that one point just 1 minute, Mr. Cox?

Could you see how a man in Mr. Meese's situation, an average ordinary man could conclude—couldn't you say how they could conclude that that wasn't of value in a technical sense? I mean, it may not be a high enough standard, but it seems to me that there are a lot of people who would conclude that, since he didn't give me any money, he did me a favor—you see, where I am getting lost here is that I think there are—and I acknowledge that I don't think it's a high enough standard to be Attorney General—I think that it relates to sensitivity rather than how ethical one is. I think there are tens of millions of honest Americans who would say: the man gave me no money, the man did nothing other than do me a favor that I would have done for him. You see, I think Mr. Meese is the kind of guy who would have, in the reverse spot, done a favor like that, expected nothing in return, and helped the person sell their house, and wouldn't say I gave that person something of value.

Consequently I can see how Mr. Meese would look at the other end of it, being the recipient, and say: I didn't receive anything of value.

Now, I acknowledge that goes to sensitivity, but I don't think it goes to being ethical.

Would you reflect on what I just said?

Mr. Cox. I think the difference perhaps between the words I am using and the thought you are expressing, Senator, is purely what we mean by ethical

Senator BIDEN. Well, no——

Mr. Cox. May I explain a little?

Senator BIDEN. Sure, yes.

Mr. Cox. I think in a lawyer, any lawyer acting on a situation, where you have received something that affected your financial situation, any situation in which you are in debt to the man, any situation in which you have business interests on the other side, I would call it unethical.

Now, I don't mean, when I say unethical in that sense, to charge—I think the phrase I would use is "moral turpitude." This is done knowing I shouldn't do it, that it is done corruptly.

I will agree that people outside the Government sometimes do fall into that kind of mistake. When they do it once, casually, perhaps inadvertently, one regrets it; when it happens a number of occasions, as it did with Mr. Meese, one is not inclined to be quite as tolerant.

But, again, I don't charge Mr. Meese with conscious wrongdoing. I think he should have known the rules, I think he should know the standard that governs all of us, and should have lived up to it. I call those ethical standards.

Senator BIDEN. You know, it's a little bit like—let me just say one last thing.

Senator HATCH. Please just use up your time.

Senator BIDEN. All right, I will say this, and then I will use up my time and wait till the second round.

Senator HATCH. Of course.

Senator BIDEN. I may be wrong about this, General, but I get the feeling from my discussions with Mr. Meese that he viewed what Barrack did for him—and I believe from the record that when Mrs. Meese said he's the one with the halo, that it was similar to exactly how they would feel had, God forbid, they had a daughter or a son who was having problems at school—or say me, I won't say the Meeses—if I had a son or daughter who was having problems with drugs or something, and someone came along and went out of their way especially to help my son or daughter, not in terms of helping them financially, but took time with them, took time, would in fact—let's just, so I stay on track here, at least in my own mind, because I have great respect for you and it's really important to me that I understand what you are saying—important to me, nobody else—assume, God forbid, the Meeses had had a daughter or grandchild who was having problems with drugs and Mr. Barrack had a special way with kids, like many people you and I know, and that person went out of their way to spend extra time counseling, extra time with and charged nothing, but helped straighten out their child, and then later Mr. Meese helped that person get a job in the White House.

Would that be unethical?

Mr. Cox. I would recuse myself. I would think I had acted in what I would call an ethically wrong manner if I didn't.

Now, maybe I would forget, I don't want to sound—I don't feel morally arrogant here. But I think I would be very sorry, and I would think I had done very wrong if I didn't step out.

Senator Biden. Well, I agree with you—and to use the over-used phrase that is used around here, to be, you know, more chaste than Caesar's wife and all that—I agree that I would hope I would say I can't help you get a job because it won't look good. But I just want to make the point that when I said yesterday I don't believe Mr. Meese is unethical, I don't believe that the average person would think that they had received something of value within the context of the law and the ethical rules of government.

But then, again, I don't want the average person to be Attorney General. I mean, it's a distinction with a difference for me.

I think Mr. Meese's instincts were honest and Mr. Meese's instincts were decent, but they just didn't rise to the level required of someone who was going to hold that kind of public trust. I think it's more—I don't think they thought of the money, I don't think they thought this guy, you know, did them a financial favor. I think they viewed it in the same way that they would view it if that person was a principal of the school and helped their son through a tough period, or whatever.

And I don't know whether that makes any difference to you or anybody else. It kind of makes a difference to me in how I view Mr. Meese.

Mr. Cox. I would simply say, too, and I hope you understand me and take seriously when I said I'm not accusing him of moral turpitude, corrupt motives.

Senator Biden. All right.

Mr. Cox. Or an evil state of mind. I would like to add two things that I think are relevant. One is that this did go to his financial condition. One can't get away from that fact. That's a little different from your example.

And second, there are Government employees all over this city, and the United States, who are being reprimanded and disciplined for approving contracts to people who bought their house, who have sold them a house or something like that.

We're dealing, particularly Mr. Martin, dealing with something that affects the conduct of the whole Government.

Senator Biden. I agree, and I think you cleared up—I mean I just wanted to make sure. Rather let's use the term for the sake of this exchange you and I had of ethical and unethical, I understood what you said. I just wanted to make sure that you think it was unethical, but it was not, there wasn't moral turpitude. He didn't intentionally—but nonetheless the ethical standard was not met.

Mr. Cox. I think we can certainly join in that.

Senator Biden. OK. That's all the questions I have.

Senator Hatch. You have 8 more minutes.

Senator Biden. No; I'll yield.

Senator Hatch. Senator Specter did step out. He said he would come back and question later. Senator DeConcini.

Senator DeConcini. Thank you, Mr. Chairman. General Cox can you tell us a little bit about Common Cause? I happen to be a member, so I know a little bit about it. What is the objective and mission of Common Cause, as you see it?

What is it all about?

Mr. Cox. Well, Common Cause is an organization of citizens, approximately 250,000 members now, concerned primarily with how Government works. Primarily with openness, honesty, integrity, adherence to proper standards in Government.

This seems to involve us in a number of things. I wasn't the chairman or a member then, but during the mid-1970's the core of the activities centered upon such things as the Ethics in Government Act, the reform of campaign financing, and other things of that kind.

I include in openness of Government such things as the Voting Rights Act where I was very active myself.

Senator DeConcini. Is it directed mainly towards issues?

Mr. Cox. It's mainly directed towards systemic issues. Common Cause, in the case of appointments, has opposed only four, possibly five presidential nominees. Four—or three during the Carter administration and one during this administration.

Senator DeConcini. You say it did oppose nominees?

Mr. Cox. Opposed four or five. I cannot be perfectly accurate. It did oppose four or five nominees where it thought the appointment would violate proper Government standards.

And we have, for a long time, pressed the responsibility of the Senate in general terms when people were nominated to really do the job that I think the Constitution confides in it.

Senator DeConcini. You indicated, in your statement, that you're as much or more concerned about the image that Mr. Meese, in your judgment, brings to this office as you are of what the Attorney General does in the office. Is that correct? Is that what your statement said? Or are they equal?

Mr. Cox. I would say they're certainly equal, sir. The way he acts in his office and the way he has acted in the past is the way, the only right way to give an image. You agree with me on that. I'm not concerned with what he projects as a matter of some advertising man. It's what he projects by his conduct.

What I'm trying to say by that is not that the conduct itself isn't important, but that it reaches out, affects other people's conduct. It inspires them, or discourages them.

Senator DeConcini. Do you see any reason why someone who has the image, right or wrong, of being involved in some impropriety, not criminal or ethical impropriety, but appearance of impropriety could not be an outstanding office holder, whether it be attorney general or any other office.

In other words, can someone change in your judgment?

Mr. Cox. Well, I think it's a matter of time to a degree. I believe that there are opportunities to better oneself when one's made a mistake. We're all engaged in that all of our lives.

I think at this point, quite frankly, for Mr. Meese now to say I'll do better would come much too late to convince me. Even now it seems to me from what I heard on the TV screen of his testimony—it wasn't all of it, but what I heard of it, he now seems to me not to understand what are the standards of conduct.

Someone who doesn't understand them, who can't say "yes, I think an attorney shouldn't act on matters" where he has the same kind of financial involvement that our Mr. Meese has. I cannot have—I don't like to say this—but I can't have any confidence that he will be able to apply those standards to others, or to himself.

Senator DeConcini. General, I hold you in the highest esteem, and certainly Common Cause. I happen to be a member of Common Cause. Should I recuse myself, in your judgment, from voting on this particular issue?

Mr. Cox. I don't think your financial interest is involved, Senator. As you know there are—I don't mean to take too much time—but the position of a Senator is not always the same as that of a position in the executive branch.

A Senator is called upon to vote on general laws. None of you, certainly none of you are required to disqualify yourselves or are subject to criticism when you vote on a tax increase, or tax deduction.

Even so, you'll be affected in varying degrees. There are differences. I don't think your membership in Common Cause—if you were voting on whether to appropriate money to buy land of Common Cause, if Common Cause owned land, that might be different. But we don't, and we haven't got any to sell.

Senator DeConcini. Thank you, General Cox.

I have one further question. It concerns one of the problems I have with the appointment. Mr. Meese has left me with the impression that not only did he not do anything criminal, he did not do anything unethical, per se, either. I am not sure whether or not he has left the proper impression that he understands the problem that has been created by not being extremely careful, sensitive, and open; whether or not he could have improved his presentation here by immediately coming forward with such a statement. You indicate that it's too late now.

In your judgment, could that have been accomplished, in this case if Mr. Meese had perhaps so indicated at the very beginning last year. What is your observation?

Mr. Cox. Well, Senator, I'll answer you as candidly as I can. Although it's not very helpful, I've suffered some over the question. Suppose Mr. Meese last spring had said, "Gee I now realize this wasn't right," in the sense in which I'm putting it. "I'm sorry."

I don't know whether I would have said, "I respect your saying it, go continue being the President's counsel." I would have at the minimum have said that. Whether I would have said, "Well, I can swallow this." You know, it's given when seeking the office. Let's assume we're talking about somebody in the abstract.

It's given when seeking the office. I couldn't help, particularly if I didn't know the man personally, allowing that to enter my judgment. And I've said to myself this is, subjectively a candid answer. I just don't know.

But I'm awfully clear when it gets to this office. It would have been too late, but it hasn't been said.

Senator DeConcini. Are you familiar, General Cox, with the statements that Mr. Meese has made here. Far be it for me to paraphrase him—but to the best of my recollection, having heard him several times he said, that if he had to do it over, he would do things differently. Also, that he is going to take certain steps to prevent this from happening in the future. He is going to be extraordinary in the conduct of this office. He has assured us on this Committee that we are going to be very satisfied with his conduct, partly because he feels that he has the integrity and also because of the experience he's been through.

How does that sit with you, General Cox?

Mr. Cox. Well, those generalities wouldn't satisfy me, Senator, because they are very general. The statement, "I would do things differently." The impression I got was, well, I've done things in the way that people find fault, and they really shouldn't. But I would try to avoid their finding fault. And the general promise, if he doesn't understand the basic precepts, it isn't worth much.

I don't regard this as confession, repentance, which I think is what we were talking about earlier.

Senator DeConcini. Thank you, General Cox. I have no further questions, Mr. Chairman.

Mr. Hatch. Thank you, Senator DeConcini. We'll turn now to Senator Specter.

Senator Specter. General Cox, you have said that a person in Government ought not to pass on a transaction involving an individual with whom he has a financial relationship. And in exploring that issue, does it make any difference to you that the financial transaction is a completely closed one where all the legal rights and obligations have been established, so that there is no discretion left for the governmental officials as to what's going to happen in a debtor/creditor relationship which might depend upon what the government official does in his governmental capacity?

Mr. Cox. No, sir, I also—part of your statement puzzles me, because I take it the creditor always has some discretion as to when and how he enforces the sale. I don't see how you can rule that out.

Senator Specter. Well, the creditor has no discretion if the debtor fulfills all the contractual obligations.

Mr. Cox. Yes; but no debtor can be quite that sure. And I think the regulations are very clear on their face on that.

Senator Specter. Well, General Cox, take a situation where a judge in a small county has a loan with a savings and loan association and there is a foreclosure action brought by that savings and loan association that comes into his court.

Should he disqualify himself from sitting on that case?

Mr. Cox. I would think so, yes.

Senator Specter. Why?

Mr. Cox. Because he has the relationship, financial relationship with the party before him in a case.

Senator **Specter**. Well, but those——

Mr. Cox. I think thereby, not only particuarly if he is hard pressed he runs the risk of confusing his own judgment, but he certainly runs the risk of undermining public confidence in the administration of justice.

Senator **Specter**. Well, putting aside the undermining of public confidence in the administration of justice, just take the financial obligations that the judge has to the bank. He pays his mortgage on time, he doesn't have any deficiencies, he's not asking the bank for any favors. What does he have to be concerned about if he finds for or against the bank? It is a fixed relationship where he's not subject to currying favor.

Mr. Cox. I just don't think life either is or appears to be that way. I don't know what judges do. I would think it would be very wrong of me to sit under those circumstances

Senator **Specter**. In your last response you talk about the appearance of justice, the appearance of impropriety, and those standards are very well established. And we had examined this with the officials of the Government Ethics Committee on the line of consideration that the standards for the appearance of impropriety are set, because there can't be an investigation in every case. If it appears to a citizen that a judge is doing the wrong thing, the judge ought to avoid the appearance of impropriety.

It may be something very harmless, and there may be no impropriety at all. And my question, exploring this issue with you, is whether you think it makes any difference if you have a proceeding like this one where there is a full opportunity to decide whether or not there is any substance of impropriety? Or do you think that even if it is concluded—and I'm not saying that it is, but that there is no substance of impropriety, do you believe that the appearance of impropriety continues to be a disqualifier?

Mr. Cox. Well, I think first we must get our terms straight.

Senator **Specter**. Fine.

Mr. Cox. I think there is impropriety, substance of impropriety, acting in those cases. The hypothetical cases we've been talking about. I suggest to you that if a judge sits on a case of an individual who has made to him loans such as Mr. McKean made to Mr. Meese, that he has engaged in impropriety. Period.

I think that if the judicial conduct commission—where they exist in a number of States—were to examine the case, one of the things that it might seek to inquire into is whether this affected the judge.

I think its final disposition in terms of the degree of criticism and punishment might depend on that. In terms of whether the judge has done right or wrong, I think it would be perfectly clear that he had done wrong.

May I suggest, Senator, just to put the hypothetical in as meaningful a way as possible, that you would have done exactly the same thing when you were district attorney. If someone on your staff had acted on the case of a man who had made that kind of loan to him. If it were a young man, you might have said, "John, you've got to realize that this is wrong."

Senator **Specter**. Well——

Mr. Cox. If he did it four or five times, I think you would have fired him.

Senator **Specter**. Well, Mr. Cox, if he had done something wrong, it wouldn't have taken four or five times. It would have taken one It depends on what it was. But that's the question, whether it's something wrong.

But if I had a lawyer on my staff who had a loan with the Philadelphia Saving Fund Society and he was asked to handle a mortgage foreclosure, which involved the Philadelphia Saving Fund Society, I don't think I'd come to the same conclusion.

I'm not saying we have that here, but I'm trying to test your approach.

Mr. Cox. Well, I think I would—I don't think I would fire him, but I would tell him not to do it again. And if it was not a loan from a regular bank, my judgment would be more severe.

Senator **Specter**. The question that I had asked you was really on the standards as to what we apply in our consideration of appearance of impropriety, as contrasted with the substance of impropriety.

And I understand full well that you believe that there is a substance of impropriety involved in this matter with Attorney General-designate Meese.

But I am seeking to get your view of the abstract. Suppose that this committee finds that there is no substance of impropriety, but we do believe that there is an appearance of impropriety.

And the reasons for the appearance or disqualification or a conclusion of unethical conduct on the basis of an appearance of impropriety may be bottomed on the factor that you can't investigate every matter—like we're investigating this one.

Suppose we conclude that there is no substance of impropriety, but that there is an appearance of impropriety. Do you consider that to be unethical conduct which might would result in disqualification?

Mr. Cox. Yes; accepting your term. My trouble is with the term. I think that acting where there is a conflict of interest is an impropriety. Period. Government officials have been disciplined for this. They're being disciplined almost every day.

Now, why do we forbid people to act where there is a conflict of interest? Part of it is that neither they nor anyone else could stop to find out just whether they were or were not influenced. Nobody can ever get to the bottom of that. There was no reason to suppose when Mr. Meese acted that anyone would ever inquire of that.

Certainly the rule applicable to trustees can't be that it's all right to take trust funds and invest them in your company provided you don't intend to cause the person harm, providing you don't intend to help your company. It's wrong to do it, as you and I know, period.

Now, the reasons for that are partly you can't tell whether it's just an appearance. Not even the person themselves can tell.

The other reason is—this applies particularly to Government—is that the appearance of self dealing, even when no harm is done, undermines confidence in the Government. Therefore one mustn't do it.

The regulations have been perfectly clear about this. They don't say, "Don't act where there is an appearance that you may have lost impartiality unless you can show that you didn't lose impartiality." They say "Don't act where there is or might be an appearance of loss of impartiality."

Senator SPECTER. General Cox, when you talk about the issue of conflict of interest, and you use the example about it being OK for the Congress to pass upon a tax bill even though they may have some "far down the line" consideration, how about when the Congress raises its own salary? Is that ethically correct?

Mr. Cox. Yes, sir.

Senator SPECTER. Isn't that a pretty blatant conflict of interest?

Mr. Cox. Well, there's just no other way of preserving the principle that appropriations must be made by the Congress.

Senator SPECTER. Well, there's another way. Don't pass it for your own term of office. Some jurisdictions prohibit that as a matter of law. You can raise the pay, but it doesn't apply during your term of office.

There is an easy way around that.

Mr. Cox. Well, I think this is one of the instances in which the duties of the legislator are different from those of someone in the executive branch, or those of a judge.

Senator SPECTER. Oh, are they? The Supreme Court of the United States passed on a case raising their pay. Was that right?

Mr. Cox. Well, that was a—it was a very troublesome matter.

Senator SPECTER. Sure is troublesome, pretty blatantly conflicting for the Supreme Court to have a case before it which puts more money in their pocket as a matter of pay, especially when the Congress has said the contrary. But the Supreme Court of the United States sat on that case. They could have designated some judges not affected by the case. It's a pretty blatant conflict of interest, isn't it?

Mr. Cox. Well, I take it that the Justices of the Supreme Court were motivated by the exception to the general rule that says that one is not obliged to disqualify oneself when there can't be a decision if he does.

Senator SPECTER. But there could have been a decision. They could have had someone else do it, but the point you're making, the point you're making, General Cox, is that an individual, be he Attorney General-designate Meese or the Chief Justice of the Supreme Court, or all nine of them are not supposed to make judgments in exceptions to rules of ethical conduct which involve conflicts of interest.

Mr. Cox. I see no necessity for Mr. Meese to have acted on Mr. McKean's appointment, on Mr. Barrack's appointment, or on the appointments of the officers of Great American Bank.

Senator SPECTER. Was there a necessity for the Supreme Court to decide to raise their own pay, in effect, in the Will case?

Mr. Cox. It's my guess they decided not to act. I would have thought, Senator, until you state to the contrary, that yes, there was a necessity. In all sincerity. I'm not well enough informed to say that you're wrong.

Senator SPECTER. Other courts have faced that issue, and have designated retired judges who were not affected by it.

Mr. Cox. Sometimes that could be done, but a retired Justice can't sit on the Supreme Court of the United States.

Senator **Biden**. Would the Senator yield on that point? Doesn't the Constitution require them to do that? Isn't there a difference here? There is expressly a Constitutional requirement that they in fact do that?

Senator **Specter**. I think not. But the Constitution is what the Supreme Court says it is, and had they chosen another remedy they could have done so.

Senator **Biden**. What remedy could they have chosen?

Senator **Specter**. They could have appointed a retired judge to decide the case, as the Supreme Court of Pennsylvania did when the issue came before the jurisdiction there.

I don't want to go too far afield. Since Senator Biden has asked for a yield, I know my time is about up, let me——

Senator **Biden**. It was just that point.

Senator **Specter**. I was going to come to one of Senator Biden's points which I think raises a fascinating narrowing of the issues. I think it worthy of exploring.

How much time do I have left, Mr. Chairman? I know you're running short on time.

Senator **Hatch**. You have about 1 minute, perhaps a little less. The time just went off.

Senator **Specter**. I have a very significant line of questioning, General Cox, which I shall desist on. Thank you very much, Mr. Chairman.

Senator **Hatch**. The distinguished Senator from Alabama.

Senator **Heflin**. Just as an interesting note, Mr. Cox, from Senator Specter's line of questioning, do you think that a faculty member of a law school should recuse himself from voting on an issue in which the dean takes a position, after the faculty member has requested a salary raise from the dean?

Mr. Cox. His individual salary raise?

Senator **Heflin**. His individual salary.

Mr. Cox. I wouldn't think I should vote on my individual salary.

Senator **Heflin**. No; I said on a matter involving, should he recuse himself from participating—you know, many law schools today, the faculty practically runs the law school. And the faculty votes on various issues. The dean is generally the administrative officer who determines salary raises. If he has requested a salary raise from the dean, should he recuse himself from voting on an issue which the dean has taken a position on?

Mr. Cox. If those are the established rules of the organization, I suppose, then the organization could waive the rules. Happily, unless my memory is very much at fault, happily that isn't the way that it's been at many of the institutions where I've taught.

Senator **Heflin**. Well, it's just a point. Let me ask you this: What, from your study of this, is your understanding of the position that Mr. Meese played in the functioning of the senior staff review committee, or what was the function of the senior staff review committee?

Mr. Cox. I understood it was to have the last word on recommendations that would be made to the President for Presidential appointments.

Senator HEFLIN. Mr. Meese has testified that the senior staff review committee had no real decisionmaking authority, that in effect it was a body that simply negated somebody that had been recommended. I gather from his testimony, that the committee was rather informal and if nobody had anything against the proposed appointee, it went through. If that is true, would that have any effect on your opinion as to whether or not he should have, one, recused himself, or two, made known his financial interest with prospective appointees?

Senator HATCH. Could you hold on that question for just a second, Mr. Cox? Please allow me to interrupt for just a second, Senator Heflin.

Senator Biden, this is the official Committee agreement regarding when the vote on Mr. Meese's nomination will occur. I would like to announce it so that everyone understands.

Senator Biden, you correct me if I err.

The Committee has agreed to vote on Mr. Meese next Tuesday, February 5, 1985 at 10:00 a.m. There will be no efforts to block a vote on Mr. Meese, and all Members have agreed that there will be no effort in the Committee to lay this nomination over.

We will vote next Tuesday.

Senator BIDEN. That's correct.

Senator HATCH. Is that sufficient Committee notice?

Senator BIDEN. That is sufficient Committee notice.

Senator HATCH. All right, then let everybody be aware that next Tuesday at 10:00 a.m. the Committee will meet and will vote on Mr. Meese.

I apologize for interruping both of you. Proceed and we'll grant Senator Heflin extra time, of course.

Senator HEFLIN. Do you understand what I was asking?

Mr. COX. I would still think that he should ask that the record show that he has no personal involvement.

I also think the—I have no personal knowledge, obviously, of the way the Committee acted, but I do infer from the report of the independent counsel that it was a good deal more than that.

For example, when the staff brought in names for the Postal Board of Governors, the decision was made not to act on them until Meese and Deaver bring in the names.

And there was a discussion of McKean's name when it was proposed by Deaver at that level. And so when Mr. Baker, as the independent counsel recites it, said, well, who is McKean, and Deaver, who incidentally had financial transactions with McKean, too, turned and said, Ed knows him.

Meese then said, in effect—I'm not quoting accurately—he's a good man.

At that stage, so far as the record shows, all Mr. Meese knew was that he had had financial dealings with Mr. McKean. So I don't think it was sheer formality.

Senator HEFLIN. That's all.

Mr. HATCH. Thank you very much, Senator Heflin.

Senator Laxalt, do you have any questions?

Senator LAXALT. No questions.

Senator Biden?

Senator BIDEN. No questions.

Senator HATCH. Any further questions?

[No response.]

Senator HATCH. If there are no further questions; would you like to finish your line, Senator Specter?

Senator SPECTER. No.

Senator HATCH. Are there any further questions from anyone on the Committee?

Senator BIDEN. I have one further question, if I may.

Senator HATCH. Senator Biden.

Senator BIDEN. General, I asked the gentleman from the Ethics Office, Government Ethics Office, today whether or not he felt that he was required in the performance of his duties to apply any different standard of ethical conduct for a GS-15 or a GS-9 and the Attorney General of the United States of America. And he said, "Absolutely not."

And that led me to my concern as it exists in this case, which I just want to pursue with you a moment.

It seems to me that there are different standards of what constitutes ethical conduct based upon the job description and requirement and the degree of public trust entrusted in the person at various levels.

For example, you've pointed out that the standard that a judge may have to recuse himself or herself may be stricter, and in fact is stricter than that of a senator because of the nature of the responsibility and the message that it sends and the degree to which it impacts upon public trust and public confidence in the institution. Is that correct? Is that the point you're making?

Mr. COX. I certainly drew that distinction.

Senator BIDEN. Would it be possible for an Undersecretary of Commerce to have done what Mr. Meese did and still warrant confirmation in that job?

Can you respond to that?

Mr. COX. I would not vote to confirm him in that job. On the other hand, I think as you have very rightly said, I share the same feeling for reasons I explained to this group when I first made my statement, that the position of Attorney General is a very special one.

Senator BIDEN. I appreciate your response, and I want to tell you, I'm not sure I am—I hope I would be—but I'm not sure I'm as honorable a man as you. I hope I am. But I want to tell you something: Regardless of this whole Meese confirmation hearing, it is a real pleasure to have a guy like you sitting in front of us.

You are kind of the embodiment of—if you're going to be offended by this, possibly—you're almost a throwback to an age in Government that I wish was back.

When men like you had a notion and a sense of public service that exceeds—I'm not talking about Mr. Meese, now—exceeds mine and probably many people here.

I think you in fact did set a standard to which a whole lot of people repaired, and because of your integrity, I think you played a role beyond which you probably even contemplated in the early 1970's, in the mid-1970's, during a dark period in our history, that helped rekindle confidence in government, and I just want to thank you for your effort even though I must admit I have trouble agreeing with everything you say. It's good to have people like you around.

Mr. **Cox**. Senator, I don't know how adequately——

Senator **Biden**. No, you don't do anything. I just——

Mr. **Cox**. Just let me say one thing. It may sound wrong, but there are such people in government; there are such people in this body. I know them. I've dealt with them. I hope I will continue to. And I say that not because I'm appearing before it, but because I do know it.

I think what's involved is keeping it so, and strengthening it. And I think that's, if I may say so, what's at stake in this proceeding.

Mr. **Hatch**. Senator Mathias.

Senator **Mathias**. Thank you, Senator Hatch.

Mr. Cox, my colleagues have asked you all the questions that I had intended to ask you and I won't ask them for a second time, but I want to join Senator Biden in thanking you not only for your dedication to the public service in this cause, but for your dedication to the public service in all causes. Thank you very much.

Mr. **Cox**. Thank you, Senator Mathias.

Senator **Hatch**. If there are no other questions, we would like to thank Mr. Cox for appearing. We appreciate the time that you've given us.

Our next witness will be the former Attorney General of the United States, the former Secretary of State of the United States, the Honorable William P. Rogers.

General Rogers, will you rise to be sworn?

[The witness was sworn.]

Senator **Metzenbaum**. Mr. Chairman, the minority leader has called a meeting at 5 o'clock and I just wanted Mr. Rogers to know that when I walk out of the room to be at that meeting, which is an important meeting—and I think some others on this committee will have to be there as well—that it is not because I am not interested in what he has to say, but it is because I must be at that meeting.

Mr. **Rogers**. Thank you very much, Senator. I appreciate that. I'll be glad, if the committee would prefer, just to submit a statement.

Senator **Hatch**. General, we would be happy to take your statement. We have allotted 15 minutes for it.

If I could just ask you one question before you begin, before we hear you, are there any opening remarks you care to make? Are you speaking only for yourself or on behalf of someone else?

Mr. **Rogers**. Only for myself.

Senator **Biden**. Mr. Chairman, I think it would be a shame not to—Mr. Secretary, I wish you would make your statement and not put it in the record.

Senator **Hatch**. Yes. We have allotted 15 minutes and we would be pleased to hear your statement.

Senator **Metzenbaum**. I want to compliment you, Mr. Attorney General. I don't know of too many men that would have come here and sat through this hearing and waited and then offered to put their statement in the record. I don't know if their ego would have permitted that. I am very happy to hear that you're going to make your statement.

STATEMENT OF HON. WILLIAM P. ROGERS, FORMER ATTORNEY GENERAL OF THE UNITED STATES AND FORMER SECRETARY OF STATE OF THE UNITED STATES

Mr. ROGERS. Thank you, Senator.

Mr. Chairman and members of the committee, I want to thank you for this opportunity to appear here today in support of the nomination of Edwin Meese to become the Attorney General of the United States.

Because of the extensive and thorough consideration of this nomination by this committee, I will be brief.

First, let me say I support Mr. Meese because I firmly believe that, if confirmed, he will perform his duties and responsibilities as the chief law enforcement officer of the Nation with dedication and a high sense of responsibility. Nothing in the report of the independent counsel casts any doubt on his honor.

The President has full confidence in his ability and his integrity. People with whom he has worked, both in California and in Washington, and many other parts of the country, confirm that he has the highest ethical standards.

I have known him for the last 8 years. I believe him to be an honorable man, and I think he will make an outstanding record as Attorney General.

While I know the committee is familiar with his extensive legal background and his impressive record as a public servant, permit me to highlight those aspects of his professional career which are of unique significance.

First, he has been a trial lawyer, a public official with broad experience in the fields of law enforcement and of the administration of justice, an educator and a businessman. He has knowledge and experience in virtually every type of activity that comprises the work of the Attorney General's Office. He has been in the forefront of efforts to reform and improve the legal system of our country.

For 8 years Ed Meese played a leading role in the work of a major district attorney's office in California. He served on the senior trial staff as legal advisor for both criminal and civil cases, acted as legislative advocate for the California District Attorneys and Peace Officers Association before the State legislature, and participated in numerous complex criminal investigations.

Sought out by the Governor of California to be his legal affairs secretary, Mr. Meese was responsible for liaison between the Governor's office and the legal/judicial/law enforcement corrective communities. He was the first director of California's State Planning Office under the then new law enforcement assistance act. As executive assistant to the Governor, he had cabinet responsibility for criminal justice planning and was chairman of the advisory committee for the Governor's select committee on law enforcement problems.

Upon entering private practice in 1975, Mr. Meese continued his interest in legal matters, serving on the California State Bar Committee on Criminal Justice. In this capacity, he headed a subcommittee on providing for legal services for indigent criminal defendants, so he has had a good deal of interest in the people who are in difficulty. He has actively supported prison reform, and we discuss that in this testimony.

Mr. Meese has had extensive experience in business and governmental law and has taught in law schools of both the University of California at Berkeley and the University of San Diego. At the latter institution he founded and directed the Center for Criminal Justice Policy and Management. For the past 4 years as counsel to the President, Mr. Meese has been involved in virtually every area of governmental law.

He serves as a member of the Cabinet Counsel on Legal Policy and helped initiate new drug enforcement programs and Federal assistance to local law enforcement agencies. Few people have had the opportunity in all aspects of so many varied aspects of our government and the administration of justice as Ed Meese has had.

I am pleased to support the nomination of a dedicated and honorable public servant.

I regret the fact that Common Cause has made an attack on him, although I feel better having heard Mr. Cox, a man for whom I have a lot of respect, because he really didn't challenge his integrity as I thought the brief did. But there's a bitter irony in his testimony today, because Common Cause was a staunch advocate of the adoption of the independent counsel concept.

Yet Common Cause reaffirmed its allegiance to that concept in Senate hearings before the committee in 1981. At that time the head of Common Cause said:

> The appointment of a temporary special prosecutor reassures the public that the investigations of high officials will be conducted without fear of political interference or favoritism. By assuring the public that a thorough partial investigation will occur, the mechanism also can benefit the official under investigation by creating a climate for the public to accept the exoneration of the official involved more readily.

Then he proceeded to say, "The Act then serves purposes that are as valid today as when passed. Finally, it enhances the credibility of any exoneration because it comes from an independent prosecutor." Certainly this independent counsel did an excellent job and was supported by some of the outstanding lawyers in the country, most of whom were in the other party.

Despite this description of the role and effect of the independent counsel procedure, Common Cause now says that it really didn't result in any exoneration. Now it is said that clearance by the independent counsel merely concluded that Mr. Meese did nothing illegal. That can be argued in the abstract, but an evaluation of this independent counsel's report convincingly establishes that the premise has no application to Ed Meese in this case.

After 6 months of inquiries, the interview of over 200 witnesses, the review of thousands of pages of documents, the re-creation of every detail, every minute detail of Mr. Meese's financial activities, and the giving of testimony under oath to a grand jury, by many of the witnesses, including Mr. and Mrs. Meese, the report rejected completely any suggestion of illegality or impropriety.

I have read the report of the independent counsel and it is an outstanding document it carefully and comprehensively sets forth all of the facts in great detail. Any objective appraisal of this report would have to reach the conclusion that Mr. Meese acted properly and with due regard for all legal and ethical considerations.

Subsequently, the Office of Government Ethics, after careful consideration, concurred with the report of the independent counsel. Then, pursuant to its legal responsibility, went further and concluded that Mr. Meese had not violated any standards of conduct and that there was no substance to any charge of impropriety.

What, then, is the attack now on Mr. Meese? As I say, I was pleased to hear Senator Biden say that he thinks he's an honest man, a decent man, and I think I heard Mr. Cox say that there was no problem of an ethical nature, except as he describes it. His description is somewhat different than I think most people would make.

But, in any event, the independent counsel found there was nothing illegal. So when Mr. Cox talks today about having a discussion with Mr. Meese and asking him early on to admit something, I suppose Mr. Meese thought at the time that he was under an attack for some illegality and, therefore, would be quite reluctant to make any admissions. But after all of this review, the independent counsel concluded that there was no illegality of any kind.

I think, too, a fair reading of that report shows that the independent counsel thought there was nothing unethical in nature because the independent counsel continues to use words like "nothing improper or illegal." So I think that those of us who know Ed Meese are very pleased to realize that there's no question now of illegality and there's no ethical question involved, and what we're really talking about are appearances. I think the discussion this committee had was an interesting discussion and I think it has been a very well-conducted hearing, but I don't really believe it's a basis for disqualification.

Would President Reagan nominate Ed Meese to be Attorney General of the United States if he had the slightest doubt about his integrity or his high standards? Everyone who knows Ed Meese knows that he's an honest man. Over a lifetime of professional service to the people of his community, State and Nation, he has compiled a large group of admirers, many among his political opponents.

The test for confirmation should not be the political philosophy of the nominee, which when all is said and done underlies, I believe, the attack by Common Cause. To deny Ed Meese this nomination would, in my opinion, bring into question the validity of the independent counsel's role and the Office of Government Ethics and deprive the United States of the services of a man well qualified—and I believe he is very well qualified. I believe he will make an outstanding record as Attorney General if confirmed.

It would deprive the United States of the services of a man well qualified to occupy the position for which the President has nominated him, and would do deep and permanent personal harm to a very decent man and outstanding public servant. So I am very pleased to support his nomination.

I was very interested in hearing his testimony yesterday. I thought myself, and I think you will, that he is the right man for the job at the moment. I think he will do a particularly good job in certain fields. For example, I think he will conduct a major effort to improve the criminal conditions in this country, make an attack on crime nationwide. I think that's going to require the cooperation of a lot of the associations that he's been dealing with. I'm speaking about district attorneys, State attorneys general, mayors of cities.

I noticed yesterday in his answer to questions from Senator Specter, he pointed out that he intends to play a major role, if confirmed, in trying to reduce street crime particularly. I think he's ideal for that job.

Second, he has been very interested in prison reform and prison matters, and that's a major function to play in the Department.

He also has been very active in helping poor people get legal representation in the States. He did it before he came to the Federal Government. I think he has a sincere interest and determination to improve the enforcement of civil rights in this Nation.

So, all in all, I think he's a fine nominee. I think that he has learned a lot from this experience. I regret that some of the Senators felt that he didn't express his regrets sufficiently, but I read him to say that he had learned a lot, that he realized there were things he had to improve on, that he was going to be very careful and very circumspect in the future.

I would think that the question that the committee has been discussing about appearances he would take to heart, and I think he will. As I say, Mr. Chairman and members of the committee, I think he'll make a very good Attorney General.

Thank you.

[The following statement was received for the record:]

PREPARED STATEMENT OF WILLIAM P. ROGERS

Mr. Chairman and Members of the Committee --

I want to thank you for this opportunity to appear here today in support of the nomination of Edwin Meese to become the Attorney General of the U. S. Because of the extensive and thorough consideration of this nomination by this Committee I will be brief.

First let me say I support Mr. Meese because I firmly believe that, if confirmed, he will perform his duties and responsibilities as the chief law officer of the nation with dedication and a high sense of responsibility. Nothing in the report of the Independent Counsel casts any doubt on his honor. The President has full confidence in his ability and his integrity. People with whom he has worked both in California and Washington and in many other parts of the country confirm that he has the highest ethical standards.

I have known him for the last eight years. I believe him to be an honorable man and I think he will make an outstanding record as Attorney General.

While I know that the Committee is familiar with his extensive legal background and his impressive record as a public servant, permit me to highlight those aspects of his professional career which are of unique significance.

He has been a trial lawyer, a public official with broad experience in the fields of law enforcement and the administration of justice, an educator and a businessman. He has knowledge and experience in virtually every type of activity that comprises the work of the Attorney General's Office. He has been in the forefront of efforts to reform and improve the legal system in our Country.

For eight years, Ed Meese played a leading role in the work of a major District Attorney's Office. He served on the Senior Trial Staff, was legal advisor in both criminal and civil cases, acted as legislative advocate for the California District Attorneys and Peace Officers Associations before the state legislature, and participated in numerous complex criminal investigations.

Sought out by the Governor of California to be his Legal Affairs Secretary, Mr. Meese was responsible for liaison between the Governor's Office and the legal, judicial, law enforcement and corrections communities. He was the first Director of California's State Planning Office under the then-new Law Enforcement Assistance Act. As Executive Assistant to the Governor he had Cabinet responsibility for Criminal Justice Planning and was Chairman of the Advisory Committee for the Governor's Select Committee on Law Enforcement Problems.

Upon entering private business in 1975, Mr. Meese continued his interest in legal matters, serving on the California State Bar Committee on Criminal Justice. In this capacity he headed a subcommittee on providing for legal services for indigent criminal defendants. He has actively supported prison reform.

Mr. Meese has had extensive experience in business and governmental law and has taught in law schools at both the University of California at Berkeley and the University of San Diego. At the latter institution, he founded and directed the Center for Criminal Justice Policy and Management.

For the past four years as Counsellor to the President, Mr. Meese has been involved in virtually every area of governmental law. He serves as a member of the Cabinet Council on Legal Policy and helped initiate new drug enforcement programs and federal assistance to local law enforcement agencies.

Few people have had the opportunity for such thorough and varied background in all aspects of the administration of justice. I am pleased to support the nomination of a dedicated and honorable public servant.

And I am sorry that even after the report of the Independent Counsel and the Office of Government Ethics the attack by Common Cause on Mr. Meese continues.

There is a bitter irony unavoidably presented by those who have undertaken this attack. Common Cause was a staunch advocate of the adoption of the Independent Counsel concept. It reaffirmed its allegiance to that concept in the hearings before the Subcommittee on Oversight of the Committee on Government Affairs, United States Senate, May 20 and 22, 1981.

At that time, the President of Common Cause quite accurately stated:

> The appointment of a temporary special prosecutor reassures the public that the investigations of high officials will be conducted without fear of political inference or favoritism. By assuring the public that a thorough impartial investigation will occur, the mechanism also can benefit the official under investigation by creating a climate for the public to accept the exoneration of the official involved more readily (at page 3).
>
> The Act, then, serves purposes that are as valid today as when it was passed.... Finally, it enhances the credibility of any exoneration because it comes from an independent prosecutor (at page 3). (emphasis added)

Despite this unequivocal description of both the desirability and the effect of the Independent Counsel procedure, the cry is now raised that no exoneration, in fact, occurred. Now it is said that clearance by the Independent Counsel merely concluded that Mr. Meese did nothing illegal. That can be argued as an abstract matter but an evaluation of this Independent Counsel's report convincingly establishes that the premise has no application to Ed Meese in this case.

After six months of inquiry, the interview of over 200 witnesses, the review of thousands of pages of documents, the re-creation of every minute detail of Mr. Meese's financial activities, and the giving of testimony under oath before a grand jury by many of the witnesses, including Mr. and Mrs. Meese, the report rejected completely any suggestion of illegality or impropriety.

I have read the report of the Independent Counsel and it is an outstanding document. It carefully and comprehensively sets forth all of the facts in great detail. Any objective appraisal of this report would have to reach the conclusion that Mr. Meese acted properly and with due regard for all legal and ethical considerations.

Subsequently the Office of Government Ethics after careful consideration concurred with the report of the Independent Counsel. Then pursuant to its legal responsibility went further and concluded that Mr. Meese had not violated any standards of conduct and that there was no substance to any charges of impropriety.

Why then does Common Cause continue to attack Mr. Meese on ethical grounds?

This attack by Common Cause is made on a man who is a longtime friend and associate of a popular and newly elected President who has chosen Mr. Meese to be Attorney General of the U.S. Does such an effort by Common Cause serve the public interest? Would President Reagan nominate Ed Meese to be Attorney General of the U.S. if he had the slightest doubt about his integrity or his high standards?

Everyone who knows Ed Meese knows that he is an honest man. Over a lifetime of professional service to the people of his community, state, and nation, he has compiled a large group of admirers, even among his political opponents. The test for confirmation should not be the political philosophy of the nominee which, when all is said and done, underlies the attack by Common Cause. To deny Edwin Meese this nomination would be to bring into question the validity of the Independent Counsel's role and the Office of Government Ethics and deprive the United States of the services of a man well qualified to occupy the position for which the President has nominated him, and would do deep and permanent personal harm to a very decent man and an outstanding public servant.

Senator HATCH. Thank you, General. We appreciate your comments.

Senator Biden.

Senator BIDEN. General, when you were Secretary of State or Attorney General, if you had been in the Active Reserve and you were promoted and you later found out that at a minimum the regulations were stretched and at a maximum rules were violated, without your knowledge, to acquire that promotion, what would you have done?

Mr. ROGERS. That's a difficult question for me because I was in the Navy during the war for 4 years. The first thing I tried to do was get out of the Reserve, so I have a little difficulty in answering that question.

I don't know what I would do, frankly. I know that a lot of people in this city have gotten commissions and Reserve commissions and so forth. It has raised some questions in my own mind. I honestly don't know what I would do under those circumstances.

I think, as the Independent Counsel has suggested, that Mr. Meese was not involved in the process, and whether he should have done something later or not, I honestly don't know. I haven't gone into the details enough to know. I just know that it surprises me he would want to get in. I really wanted to get out.

Senator BIDEN. Mr. Secretary, you served as Attorney General in the Eisenhower administration, an administration that was rocked by the scandal of the Sherman Adams affair. Adams held a position of confidence and trust in the Eisenhower administration, similar to that which Mr. Meese holds in terms of trust and confidence of the President in this administration. The so-called Sherman Adams affair involved the receipt of a vicuna coat, the loan of a rug and payment of hotel bills, none of which as I understand—and please correct me if I'm wrong—was illegal, prosecutible. But it forced the resignation of one of President Eisenhower's most trusted advisors.

The allegations against Mr. Meese and the ethical questions that have been raised involve episodes that raise questions about whether or not, even though it was not illegal, it was technically ethical or unethical.

The question I want to ask you is, what has happened in 25 years around here?

Mr. ROGERS. Well, Senator, at that time I was Deputy Attorney General, and I was involved only slightly in that matter. But the charge was quite different, in that the charge was that in return for those gifts, Sherman Adams called the agency about a matter then pending. So it was alleged that that was——.

Senator BIDEN. It was illegal though, wasn't it?

Mr. ROGERS. It could have been construed that way. I never construed it that way, but it could be construed as a payment for interfering with a proceeding then pending before the Government.

Senator BIDEN. How is that different than deciding on giving someone a job?

Mr. ROGERS. If you don't mind, Senator, could I——

Senator BIDEN. I'm sorry. I thought you had finished.

Mr. Rogers. I always thought that that was—of all the things I witnessed in Washington in my life, I always thought that was one of the real injustices——

Senator Biden. Sherman Adams?

Mr. Rogers. Sherman Adams. I think he was a very honorable man. I think he was one of the most straightlaced men I ever knew, and I think he was absolutely oblivious to the fact that that connotation could have been placed on it.

Senator Biden. I'm not being facetious, but now I understand your testimony. You are an honest, consistent, and honorable man and I have no more questions, because I am prepared to believe that Meese was oblivious to it, that the standard that was applied in 1958 or 1956, whenever it was, should be applied now.

Mr. Rogers. I don't want to leave the impression that I think there's an analogy, though.

Senator Biden. No, I know you don't. I'm just saying—I didn't say you said that.

Mr. Rogers. I think as long as we're—Really, the charge against Mr. Meese, as I understand it, from Common Cause—and I will speak to the charge of Common Cause because I don't consider the questions that the committee members have been asking are charges; they're just attempting to find out what the facts are.

I think the charge by Common Cause, that somehow, because something appears to be bad on the surface, or maybe there's some question about it, that in and of itself is unethical. Because when you pursue it as the Independent Counsel did and you find there is no substance to the matter, then I think to then conclude that that was unethical is a very loose usage of the term.

When you say a man is unethical—and I noticed you were careful not to do that—that's a very serious charge. I think we tend in Washington to do that too much. I can see why the public tends to have doubts about the way things are run and the integrity of people because we use language like that so loosely.

In talking about the McKean matter, I could see why Ed Meese would not have given a second thought—Deaver was McKean's friend, not Ed Meese. Deaver recommended, as I understand it, McKean to be Ed Meese's accountant. They had a group of people—and this wasn't an initial appointment. He had nothing to do with the initial appointment, as I understand it. This was a renewal of it. McKean didn't even know that he was under consideration. They called him up and he said, "What are you talking about? What kind of a job is it?" Deaver recommended him. Meese didn't.

Now, the time that we're speaking about, where the claim is made that he should have recused himself, related to a reappointment of a continuation of the job that the fellow then had. It wasn't much of a job. It certainly wasn't a political plum. Nobody was yelling "Please appoint me to be a Director of the Postal Service". It didn't even pay very much.

I can't quite imagine what Ed Meese would do, with a whole list of names up for consideration for reappointment. He's in there, I suppose, with Penn James and Deaver and the others, and here's Ed Meese that has his own accountant's name come up. Would it be natural to say, "Fellows, I have to recuse myself and get out of the room because I've been dealing with the man"? I mean, it just doesn't seem to me—I can think of some situations where you should recuse yourself. I'm not sure that was one.

I tried in my own case to think about the unethical charge that was made against Mr. Meese about what he should have done in connection with the bank officers whose names came up for consideration. When I first came to Washington I was in the same situation. I needed a loan. I got a loan from the Riggs Bank. I would have never thought to say, if the head of Riggs Bank, Herb Brownell, had come up and said to me, "What do you think of the head of Riggs Bank?", I would have said, "I've got to recuse myself. They have the mortgage on my house." I just don't believe I would say that.

But, in any event, I think, as Ed Meese said, he's going to be a lot more circumspect and cautious. He realizes the difficulty you get in. It wasn't a matter of ethics with him. He's going to be—I'll tell you this. He's going to be so cautious that there aren't going to be many telephone calls that he's going to take [Laughter.]

Senator BIDEN. Then let me follow up—and I apologize. I just got a notice that the Steering Committee, the committee on our side, at least, that assigns other Senators their committee slots, and I'm on it, is meeting and voting right now. I'm going to have to leave for a few moments.

But let me just make one point and correct one fact—and I appreciate your testimony. That is, the Independent Counsel's Report expressly states that it is not and cannot speak to the ethical question, only criminal.

Mr. ROGERS. I understand. Legally, that's correct. But as you will see in the report, it talks about no improper or illegal conduct. So to that extent, it talked about propriety.

Senator BIDEN. Well, that may be, but I specifically asked them to look at the ethical questions and they said, "No, we can't make judgments on the ethical questions."

I appreciate your testimony and I'm sincerely sorry that I'm not going to be able to stay for the duration.

Mr. ROGERS. Senator, I appreciate the fact that you pointed out today what you did, that you think Ed Meese is an honest and decent man.

Senator BIDEN. I think he's a decent man; I think he's an honest man, in the same way that I suspect you meant when you said that Sherman Adams was a man who didn't give that a thought, that—I don't know anything about Sherman Adams—but that in the same way you meant it, that's how I mean it about Ed Meese.

Mr. ROGERS. I understand.

Senator BIDEN. I don't think there's a mean bone in his body. I don't think he intentionally said, "Let's go out there and I'm going to rip somebody off". But I do think that his standard of what constitutes ethical behavior is beneath the office of Attorney General. That's all I'm saying. Just like I don't think what I've read and know of Sherman Adams, I think President Eisenhower was right in saying, "So long, Sherm", even though the poor guy probably didn't mean anything by it, didn't know anything about it. It went to the credibility of the presidency.

Mr. **Rogers**. Well, Senator, let me just say that in this case, if the Senate confirms Ed Meese, I am certain that he will be extremely circumspect. I expect he will recuse himself from damned near everything that he can think of to recuse himself in. I don't believe you will ever have that problem with him, if that has been a problem.

I think the things we are talking about occurred because he came from California, he was an honest man, he knew he was an honest man, and he didn't think that people would construe some of these things the way they've been construed.

Senator **Biden**. That's why I was prepared to——

Mr. **Rogers**. I think he said that the other day. I guess you and I differ on that. You don't think he said that. I think he said that.

Senator **Biden**. By the way, I thought for a while that he was saying that, and I originally came to that conclusion. I could see how he could think that. But the kicker for me was—which says something about his attitude to me—is how would a guy who's going to be Attorney General of the United States of America, knowingly acknowledge that he got his promotion to colonel as a consequence of impropriety on someone else's part that he knew nothing about, and then when he found it out, would abide by the technicality of saying, "Well, I'll get out of active, but I will not give up my commission because I deserve it anyway."

I think that is something that I can't believe, Mr. Secretary, you would have done. I know you're a friend and you'll say, "I might have done it." Your record of years of service in the Government, I can't believe that. I can't believe a man wouldn't say, "Hey, wait a minute. I'm going to be Attorney General of the United States of America. I know the only reason I have this colonelcy is because those folks out there stretched the rules, so I'm giving it up."

Mr. **Rogers**. Well, Senator, I hate to have you vote against him just for that, because if that's a mistake—and you certainly think it is—to me it's sort of a minor mistake. I don't believe it goes to his character.

Senator **Biden**. Let me make sure you understand why I arrived at where I have.

What that did, to me, that put then all those other things, which I was willing to continually give the benefit of the doubt on, in question. That tipped the balance. It's not just that, now knowing that a man would do that. That says to me, "I was probably wrong about it", then why he did those other things. I just want to share with you my reasoning process.

Mr. **Rogers**. I really don't want to argue with you about it, and I'm not——

Senator **Biden**. No, no. I appreciate your——

Mr. **Rogers**. I'm not familiar with that. But I can imagine him, under these circumstances, when he started out being accused of illegality, so he had to talk to a special prosecutor or he might be indicted, and then a lot of talk about ethics and so on, I can see why he or his lawyers might say, "My god, if I do that, I can see the headlines now: 'Meese Admits That He Was Wrong; Meese Admits that his Army, whatever it was, was obtained improperly' " and so forth, so I can see why he would say, "My god, I don't want to do that. I mean, I think I'm entitled to it and I had nothing to do with it." So under these circumstances, any little thing you say gets blown up as if you're an evil man. He didn't have anything to do with it, as I understand it.

Senator BIDEN. That's correct.

Mr. ROGERS. So you're suggesting that maybe he should have given it up. Who knows.

Senator BIDEN. General, let me just end what I have to say in the following way.

I think what you've just said is accurate. I'm confident—I know for a fact because I spoke to several of my Republican colleagues—I said the same thing. They said, "Look, Joe, what can the guy say? As soon as he does that, there's going to be the headlines." And that's probably true. But the person I want as Attorney General is the person who I would want to run the risk of the headline. I would want the Elliot Richardson who says, "Mr. President, go to hell; I'm not firing him." I would want the man or woman as Attorney General to say, "I realize if I make the following decision I am going to catch it every way from Sunday, and they're going to accuse me of 75 different things. But it's right and I'm going to do it."

You see, you're just reinforcing what I—maybe the standard is unfair. I understand why he doesn't do it——

Mr. ROGERS. Elliot Richardson worked for me and I know Elliot Richardson very well. He's a very honorable man. But I think under those circumstances that Ed Meese was in, I'm not sure he would have. I mean, here's a man who had been accused of illegality. He was talked about as a crook, and there was a special prosecutor and anything he said was different. I mean, Elliot Richardson has never been in any pressure like that, nor have I.

I can understand how—I think if you ask Ed Meese, talk to him privately and say, "I really think it would be a good thing for you to give that up", he would probably say, "Fine." In other words, I don't think that should be held against him as a reason not to have this job.

Senator BIDEN. Well, the only thing I know at this point is that, if I don't go vote, I'm probably going to be voted off this committee by my colleagues, which will not disappoint a lot of people, but I've got to go vote.

Mr. ROGERS. Thank you, Senator, I appreciate your questions.

Senator BIDEN. Thank you very much.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator HEFLIN. Mr. Rogers, I am trying to evaluate your testimony. You gave us your observations of Mr. Meese from your years of knowing him—I believe you said eight. Then, I believe, the rest of the substance was that you had read the report of the independent counsel, and you felt it had cleared him of any criminal act, illegality or impropriety, and that it was conclusive—I am not using your words now—but in effect you used the word that it should be considered as conclusive on ethical considerations. I gather that the rest of the substance of your testimony was that Common Cause was erroneous in their evaluation of it, and that you disagreed with them. I am not sure whether you may have said that they, in effect, should have taken the independent counsel's report as being the gospel and not gone into it.

Mr. **Rogers**. No, I didn't, Senator. I said they should have considered the report of the Office of Legal Ethics, governmental ethics.

Senator **Heflin**. What I am saying is that I don't necessarily agree with all of their statements or with their presentation or their conclusions. But I certainly think that they have the right to present it.

And one other thing that I would like to comment on is that obviously Mr. Jacob Stein, the independent counsel, differs from you because in his statement he says:

> The statute authorizing the appointment of independent counsel confines the inquiry to the question of whether a Federal criminal law has been violated by the respondent, 28 U.S.C. Section 591(c). The court order directs Independent Counsel to investigate violations of Federal criminal law. Nowhere in the statute or the order is there a directive to investigate and report on the propriety or the ethics of the respondent's conduct. Neither the statute nor the order afford the basis for me to submit an evaluation of fitness for public office, or to express opinions of the type requested by Mr. Meese's counsel. There are additional reasons why I submit no comment on Mr. Meese's ethics and the propriety of his conduct or evaluation of Mr. Meese's fitness for office.

He then he goes on and outlines those additional reasons.

From reading this, I don't believe that Mr. Stein felt like he was covering the issue of ethics or appearances of impropriety or impropriety in regards to it.

I just wanted to bring that out to set the record straight.

Mr. **Rogers**. Senator, to answer the two points you made first, I certainly wasn't arguing that Common Cause didn't have the right to appear and testify. Of course they did, and they do.

My point was that I was disappointed that they continued to use the word "ethical" and cast doubt, I thought, on the integrity of Ed Meese. Second, I agree with you, of course, that was the legal responsibility of the Independent Counsel, and he was quite proper in pointing that out.

But he did set forth the facts so fully and completely that if you read them, if you read the report carefully, you had to come to the conclusion, as I said in my statement, that there was no ethical concern.

He did use, even though he wasn't supposed to—he did use words like "there was no impropriety or illegality," so he coupled the two.

But aside from that I think that he did such a magnificent job in setting forth all of the facts, that it is very difficult to come to any conclusion that there was a question of ethical consideration. He didn't say anything in that report that sounded as if Mr. Meese had done anything unethical.

And what troubles me about these things is that people—it's so easy to charge somebody with something unethical or improper; it is so difficult to get rid of it later on. We have a tendency in this society to take a man's reputation as something that you can just kick around, and I don't think there is anything in the Independent Counsel's report that casts any doubt about Ed Meese's integrity.

Second, I think the Office of Government Ethics did a good job, and I think they concluded there is nothing involved with Ed Meese's conduct that was unethical.

Now, if you eliminate illegality and you eliminate anything that was unethical—and Senator Biden was very forthright, I thought, in saying he didn't think there was anything unethical about it—you eliminate those two things, what do you have left? You have appearances.

Well, you know, what appears OK to some party may not seem OK to Common Cause. Common Cause doesn't like the appearance of most conservatives. I am sure they don't like our appearance.

So they say they appear to be something. And it's the use of the word "unethical" and "lack of integrity" that is troublesome to me, that's all I was saying.

Senator HEFLIN. Well, I just get a different opinion from reading the report of the independent counsel. I come to the conclusion that he avoided getting into ethical matters, and I do not put the value that you do on this report as to the issue of propriety and ethical consideration. I think Mr. Stein endeavored to avoid that. And I think that is one of the reasons that we are having this hearing and going into it.

Mr. ROGERS. Well, I certainly am not taking issue with the committee's investigation. I do think, though, that Mr. Stein emphasized his mandate, legal mandate, which he of course had to do—he had to say my legal mandate is just to deal with illegality.

But I read that report as being so carefully drawn that it was very difficult to come to any conclusion that there was anything unethical involved in it or improper. And, as I say, I was pleased that Senator Biden I think has come to the same conclusions.

Senator HEFLIN. That's all.

The CHAIRMAN. Thank you. The distinguished Senator from Utah, Senator Hatch.

Senator HATCH. Mr. Chairman, thank you. General, I appreciate you being here, and I don't mean to keep you any longer.

You have made some points that really nobody else has made. Have you thoroughly read this report?

Mr. ROGERS. I did.

Senator HATCH. And I read it, too. I found that there is a wide disparity between the facts found in that report and what Common Cause said in its particular case against Edwin Meese for Attorney General.

Let me see if you agree with me. I think if you look at the Common Cause review, its case with respect to the McKean loan, for instance, just to use an illustration, made to Mr. and Mrs. Meese is anchored by the assumption that Mr. Meese "did accept very substantial favors."

They use the terms " 'very substantial favors' from Mr. McKean. Both in the unsecured loan with addition 'interest due not less than annually' that Mr. McKean arranged and also in the foregoing of interest." Unquote.

From this assertion one would conclude that Common Cause argues that Mr. Meese supported Mr. McKean's first nomination and then Common Cause said "knowing that he had received financial favors from McKean."

The truth of the matter is that the independent counsel found just the opposite. I think you'll find this at page 146 of the independent counsel's report.

Mr. ROGERS. Just the opposite.

Senator HATCH. It isn't just the opposite. It's clear.

Mr. ROGERS. That's right.

Senator HATCH. What his findings are That's what bothers me. It's one thing to be against a person. [illegible] another thing to distort the record. Listen to what it says.

Page 146. It says in the first paragraph, beginning in the second sentence, "Furthermore, the loan Mr. McKean arranged appears to have been an arm's length transaction, and the stated length of interest was higher than Mr. Meese would have paid had he been able to negotiate a loan from a bank that would be secured by a second mortgage on his Virginia home." Et cetera.

Then it says, "Nonetheless, it could be concluded, and we assumed arguendo"—we'll give them the benefit of the doubt for purposes of our analysis—"that Mr. McKean afforded the Meeses something of value." Compare that with Common Cause's characterization of it as something, accepting very substantial favors from Mr. McKean.

Doesn't that bother you a little bit?

Mr. ROGERS. Absolutely. This report is replete with things like that. Common Cause apparently hired 13 attorneys to write this. Their names are all listed here. It's a real hatchet job.

Senator HATCH. It certainly is.

Mr. ROGERS. If you look at another one. I was very interested in this: They accuse him of not being an honorable man. On page 28. They say an honorable man—this is in connection with the consulting fees he got, the money he got and that trust—let me say first that the money he got was received by people who paid it into this fund because they wanted some work done on the transition.

So they were perfectly happy to have the money go where it went. So there's no doubt that the donors were perfectly satisfied and they provided it at the end of the time this fund was in effect, that the trustees could pay it to those that they thought were entitled to it. And they did that.

So Ed Meese earned his money. No doubt about that. It wasn't an overcharge.

Senator HATCH. No question.

Mr. ROGERS. He paid his taxes on it. He reported in his financial report the money, and he had them record the proper record on the trust saying it was consulting fees. And what does Common Cause say about that?

It says, "An honorable man would want to return the money, submit a statement of the hours spent in consultation, and then obtain payment of his fees."

Now, if they had said a fastidious man would have given the check back, submit a bill and say now give me the check back, I can understand that

But to say he wasn't honorable because he didn't do that. That troubles me.

And it's very easy for Mr. Cox to come in and to say the things he did. I didn't disagree with most of the things he said; obviously most of them were just general principles of being honest.

But to conclude from that that Ed Meese is not honorable, not honest, is very disturbing, very disturbing.

Senator HATCH. I don't want to keep you, but you know they criticized Mr. Meese, very interestingly for his role in President

Reagan's 1982 appointment of Mr. McKean to a full term on the Postal Service Board of Governors. They ignored the central conclusion from the report that Mr. Stein and his people put together.

Their conclusion, on page 135 says, "Our investigation undercovered no evidence that Mr. Meese spoke to anyone or took any action to assist Mr. McKean in obtaining a longer term."

You could go on and on. The report brought out that it was Mr. Deaver who was the moving force. Et cetera, et cetera. The report also brought out that Mr. McKean, as a courtesy raised the matter with Mr. Meese by letter.

One could just go on and on regarding the question of what's wrong here, but you could go through each one of them with regard to what Common Cause says and find that the report's facts are considerably different and much more accurate.

Mr. Rogers. Absolutely.

Senator Hatch. They're the facts Common Cause was supposed to be relying on. But, as you called it, Common Cause performed a major hatchet job. And I must agree with you in that.

Mr. Rogers. That's right.

Senator Hatch. I agree with you that it was a great thing today for Mr. Cox to come in and not follow that report. He didn't impugn Ed Meese's personal moral turpitude, his personal character, his personal honesty, and really, as a real practical matter, his personal ethics.

That's one reason I asked no questions of him. I expected nothing less from Archibald Cox, but it bothers me that he lends his name to something like this, for you, as a former Attorney General of the United States, former Secretary of State, a person who has no axes to grind here, to come in and characterize as a hatchet job.

I think you've put it very nicely. It deserves to be called a lot worse than that. What really bothers me, is how some can find fault in the things that have occurred. I don't blame my colleagues on this committee for raising these issues. They have an obligation to do so.

The very people who are accusing Mr. Meese, are distorting the record, ignoring the facts, ignoring facts put together by a special counsel expressly for that purpose.

Mr. Rogers. That's right.

Senator Hatch. The very people who demanded that we have this type of procedure in government said it would solve all the problems in the early hearings if we had special counsels to resolve these problems. They were called special prosecutors but everybody knew that that was the wrong term. These very people come in here now and ignore what is found, they ignore the express language contained therein. What really bothers me, is that they not only ignore it, but distort it.

Mr. Rogers. They distort it. No doubt about that.

Senator Hatch. There is no doubt about it. I just wonder where the ethics on their part are found.

Mr. Rogers. Yes. It's an interesting question.

Senator Hatch. The people accusing Mr. Meese in this hatchet job of unethical conduct have to be suspect because of the way they wrote this report.

One must ask why they wrote it? Why are they so caught up in Mr. Meese? Why are they distorting the record, ignoring the record, refusing to read the record? That's what bothers me.

I have to admit there are many good things Common Cause tries to do. However, this is not one of them.

Mr. ROGERS. Senator, let me say I volunteered—I wasn't asked—

Senator HATCH. I could go through each one of these, and point out flagrant distortions.

Mr. ROGERS. I volunteered, and I took the weekend to read that and this, and this is a real distortion of this report.

Senator HATCH. It certainly is. Would you say that any fair-minded person reading that would have to recognize what a distortion it is? At least any fair-minded attorney.

Mr. ROGERS. Of course.

Senator HATCH. I don't think you have to be an attorney to recognize the disparities between the report that has taken a tremendous amount of effort and was tremendously well done, and the report by Common Cause.

But like you say, if you read the facts that he puts forward, you can't help but conclude that there is no unethical conduct here. I think most members of our committee have said that they don't believe Mr. Meese is unethical.

All I'm suggesting is that people read this report. Compare it to what you have called a hatchet job and I think they'll arrive at a likewise conclusion. The Common Cause "hatchet job" is beneath the dignity of any public interest group.

In all honesty they have no right to come in here and accuse anybody of unethical conduct after what they wrote. Mr. Cox did not, and I respect him for that.

That's what I consider to be one of the worst, most blatant, dishonorable things I've seen in a long time.

And another thing. One can go back just a few months and find that they were not outraged with a number of things that went on in the last campaign. Where was the special report on that? Where were the comments about that? Why is it suddenly that this particular person has to suffer the slings and arrows of what Hamlet called "outrageous fortune."

I suspect there may be some ideological reason behind that, and you may very well have hit upon it. I feel sorry to have to say this, but it really is a thing that should be resented by liberals, by conservatives, by Democrats, by Republicans . . . by fair people. It's unfair, and I think you've done us a real service in pointing it out. You're the first one to really do that.

Mr. ROGERS. Thank you, very much.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator HEFLIN. Since I raised this question, and we got into it, it's not my purpose or function, or even my duty to defend or applaud Common Cause one way or the other.

It's a presentation by a group in an advocacy manner of what they have concluded after reading the report of the independent counsel. And I think that some of the language that has been used in the dialog between you and Senator Hatch is probably extreme.

My purpose was that I differed with you in your interpretation of this. And I'm not going to get on the level of getting in the gutter and calling your opinion a distortion or anything else. Maybe in the advocacy role that we play we sometimes look at people who take different viewpoints from our own and we are highly critical of them

I'm trying to reach a decision based on listening, and I think I'm the only Senator that has been here and heard every word that has been said thus far. I intend to try to reach a decision based on everything I can find out about this matter.

But I merely was pointing out, because I felt the record should be straightened out here, that Jacob Stein, in preparing his report to the court, clearly made known that he wasn't getting into ethical considerations.

And I think that was his intention. I think he drafted it with that in mind, and that, I think, was his purpose. I think he did a good job in regards to that.

That does leave open the issue of ethical considerations and it is the function of this committee to consider them. We all have a right to criticize and use whatever language we choose. That's the political scene.

But I raised the issue and just wanted to clarify my position.

Mr. ROGERS. I would sort of hate to leave, Senator, with you thinking we disagree. I agree completely with what you just said. I have no disagreement at all with that.

Second, I don't think we've used any language, we haven't said a thing—at least I haven't attacked anybody. I have a great deal of respect for Mr. Cox.

What I said was I don't think what he said here today was, I think what he said here today was fine. What I said of whoever wrote this report, and I notice they had 12, 13 lawyers writing it, and I think they set out to do a hatchet job.

I'm not calling anybody names. I don't say they're not honorable men the way the report did. They said Ed Meese is not an honorable man.

I think that's pretty serious when they say something like that. And I have a right to take an issue with him. And that's what I've done. I think that's a hatchet job. And I don't know who did it, and I'm not going to call any names.

I just think that particular document is not a fair reflection of what the independent counsel wrote, and I think they were out to do him in. I'm certainly not naming anybody. I'm not calling them any names. And I think I have a great respect for Mr. Cox. I always have had.

Senator HEFLIN. Well, I would agree with you that the word "fastidious" would have been a better word to have used than "honorable" under those circumstances.

Mr. ROGERS. I would like to, just to close on a pleasant note, I started working in Washington as counsel for the old Truman committee. And we had a senator who was very fastidious and he's dead now. His secretary used to tell stories about how fastidious he was.

And she told a story that he got a book from the author of the book and he wrote a letter saying dear Mr. So and So I have your new book here, and I appreciate it very much. Then he would ask his secretary to come in and put the book on the desk. So the next sentence he wrote, "I have your book on the desk before me." So he was being very careful. He wouldn't say that. He wrote letters thanking people for dinners, and he would say, "My wife and I want to thank you for dinner." And he would call his wife and say is it OK if I say that you want to thank so and so for dinner?

So he was very fastidious. Now, if Ed Meese had been fastidious he might have taken the check, returned it, said to the fellows he knew very well, "Look it, I want you to have the check back. Here's my bill. Please send me the check back."

Now, I don't think that has anything to do with dishonor. I don't think it has a thing to do, and to say that he's a dishonorable man because he didn't do that causes me a lot of concern.

Senator **Heflin**. Well, on third thought, I believe the more proper word would have been a "meticulous" individual.

Mr. **Rogers**. I'll settle for that.

Senator **Hatch**. Which is something all of us could use more of.

Mr. **Rogers**. That's right.

The **Chairman**. Senator Hatch, do you have any other questions?

Senator **Hatch**. No, thank you, Mr. Chairman.

The **Chairman**. Mr. Rogers, are you aware of any other former Attorney Generals that share your support for Mr. Meese?

Mr. **Rogers**. Well, I know there are some. I talked to a couple of them that said it would be fine to say that they support him, but I don't know that—I'm not sure any useful purpose would be served.

I'm sure that he's got great support, put it that way. If I start naming them, there might be somebody that I left out, and I haven't checked with everybody. I've only checked with a few. The ones that I checked with were quite supportive.

The **Chairman**. The ones you checked with do support him?

Mr. **Rogers**. Yes.

The **Chairman**. Mr. Rogers, you have a distinguished record of public service as Attorney General of the United States, and Secretary of State of the United States.

We deeply appreciate your presence here in taking your time and coming here and taking the stand and staying as long as you have. We wish to express our appreciation to you.

Mr. **Rogers**. Thank you very much, Mr. Chairman.

The **Chairman**. Now, is there anybody who has to leave town and catch a plane in the next hour? If so we'll take you first. If not, we'll just take the witnesses down the list.

[No response.]

If not, we'll now go to panel 4.

Mr. Joseph L. Rauh, Jr., counsel, Leadership Conference on Civil Rights; Althea T.L. Simmons, director, NAACP Washington Bureau, Washington, DC; Arnoldo S. Torres, national executive director, League of United Latin American Citizens, Washington, DC; Father Robert F. Drinan, president, Americans for Democratic Action, Washington, DC.

Ladies and gentlemen, I'll ask you to stand and be sworn.

[The witnesses were sworn.]

The **Chairman**. We've got a good many more witnesses and we plan to finish tonight, so we're going to ask you to take 5 minutes and present your testimony, and you can place the rest in the record if you're not finished, and then subject yourself to questions by the members of the committee.

Mr. Rauh, I believe you are first—if you wish to proceed.

STATEMENT OF A PANEL CONSISTING OF JOSEPH L. RAUH, JR., LEGAL COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, WASHINGTON, DC; ALTHEA T.L. SIMMONS, DIRECTOR, NAACP WASHINGTON BUREAU, WASHINGTON, DC; FATHER ROBERT F. DRINAN, S.J., PRESIDENT, AMERICANS FOR DEMOCRATIC ACTION, WASHINGTON, DC; AND JOSEPH M. TREVINO, DIRECTOR OF LEGISLATION, LEAGUE OF UNITED LATIN AMERICAN CITIZENS [LULAC], WASHINGTON, DC, APPEARING ON BEHALF OF ARNOLDO S. TORRES, NATIONAL EXECUTIVE DIRECTOR, LULAC, WASHINGTON, DC

Mr. Rauh. Mr. Chairman, I'd like to make two points preceding.

No. 1 is I resent the idea of a 5-minute limit on testimony. I've been in this town for 50 years. I know something about the Government, and I deeply resent the idea that you're trying to railroad this thing through tonight.

Senator Metzenbaum came and said that he thought that we would go over till tomorrow morning. He thought that the other Senators had agreed. What you're trying to do now is just railroad this thing through, and it's a very important matter that ought not be railroaded through.

The Chairman. We're not going to railroad this matter. We're going to give the witnesses for and against the same time. You've been here and you've heard it hashed over and over for 3 days. That's enough. And you may proceed now for 5 minutes.

Mr. Rauh. I would like to enter the statement in the record at this point. There isn't time to read it.

The Chairman. Without objection, your entire statement will go in the record.

[The following statement was received for the record:]

LC CR

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Testimony of the Leadership Conference on Civil Rights

Opposing The Nomination of Edwin Meese

To Be Attorney General

JOSEPH L. RAUH, JR., COUNSEL

January 29, 1985

Mr. Chairman and members of the Senate Judiciary Committee: My name is Joseph L. Rauh, Jr. I am Counsel for the Leadership Conference on Civil Rights, a coalition of 165 national organizations representing Blacks, Hispanics, Women, labor, disabled persons, Asian and Native Americans, senior citizens, religious and civic groups. I appreciate this opportunity to explain the Conference's opposition to Mr. Meese's pending nomination.

In the course of its thirty-five years, the Conference has only rarely taken a position on a presidential nomination. Indeed, this is the first time in more than a decade that the Conference has opposed a Cabinet or Supreme Court level nomination. Only the extraordinary situation of a nominee disrespectful of the law and of ethical standards could compel such a decision.

The Conference's position is not based primarily on the considerable differences that we have had with the substantive policies and programs initiated and developed by Mr. Meese in his role as coordinator of domestic policy for the Reagan Administration. Bluntly put, we oppose the nomination because we believe Ed Meese, as the nation's chief law enforcement officer, would not enforce,

"Equality In a Free, Plural, Democratic Society"

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vigorously and objectively, our nation's civil rights laws and would not exhibit the ethical standards required of the nation's chief law enforcement officer.

Under our Constitutional framework, the Attorney General does not make the law (a power which belongs to Congress). Nor does he definitively interpret the Constitution and laws (a power which resides in the Supreme Court). Rather, as part of the executive branch, the Attorney General's principal duty is to enforce the law. Ed Meese lacks the commitment to ensure that the laws are fully enforced and too often encroaches inappropriately upon the Constitutional responsibilities of the Judicial and Legislative Branches.

The Bob Jones fiasco is a sad example of what we are talking about. Since the early 1970s, it had been well-established law that the government could not grant tax exempt status to schools which discriminate on the basis of race. Mr. Meese and others wanted to change that policy. Rather than ask Congress to enact new legislation or ask the courts to reverse past rulings, the Administration announced on January 8, 1982 that it would no longer deny tax exempt statuts to schools like Bob Jones and Goldsboro Christian.

Take another example. Once Congress overwhelmingly rejected the Reagan Administration's attempts to kill the Legal Services Corporation, Mr. Meese and his staff proceeded to do everything possible to gut it by executive action. Contrary to congressional intent, attempts were made to control the Legal Services Corporation by recess appointments of individuals dedicated to dismantling the Corporation from within.

Examples of Mr. Meese's disrespect for law can be multiplied: Gutting the Civil Rights Commission by discharging Commissioners who disagreed with his policies; calling the organization whose primary function is supporting and implementing the Constitution of the United States, the American Civil Liberties Union, a "criminals' lobby."

Mr. Meese's statements and actions in all these areas raise the most serious questions about his qualifications for the post of Attorney General. But his unethical conduct as Counsellor to the President is totally disqualifying. A man who repeatedly accepted financial favors from persons seeking favors from the government in which he held so high a post is not fit to provide the ethical leadership required of the nation's top lawyer and chief law enforcement officer.

Archibald Cox, an inspiring symbol of integrity as Solicitor General of the United States and as Special Watergate Prosecutor, has set forth the qualifications for Attorney General with eloquence:

> "The Attorney General must symbolize the highest standards of honor, integrity and freedom from self-interest in the performance of public office. He, more than any other individual, must give the American people confidence that he regards -- and is requiring other officials to regard -- public office as a public trust."

Mr. Meese's acceptance of favors from those seeking favors from the government is a far cry from even the most minimal standards of "honor, integrity and freedom from self-interest."

Mr. Meese's defenders have attempted to use the Independent Counsel's Report finding no cause for a criminal indictment in support of his confirmation. President Reagan called it a "vindication." Mr. Meese said he was "very happy." His lawyers referred to the Report as a "favorable outcome." But the fact Mr. Meese may have committed no crimes is hardly warrant for making him our chief legal officer.

What the Independent Counsel's Report actually does is to demonstrate Mr. Meese's unfitness for the office he seeks. For the Report sets forth in excruciating detail the large financial favors Mr. Meese received and the substantial federal positions obtained by those providing the favors -- with Mr. Meese's help in varying degrees, both as Counsellor to the President and as a member of the White House Senior Staff Personnel Committee. This is not just the appearance of wrongdoing which even Mr. Meese's supporters admit his actions give; it is wrongdoing. Mr. Meese's statement that he was "very happy" with the Report only confirms his insensitivity to even the most minimal ethical standards.

Very real dangers of unethical governmental conduct face us in the years to come and an Attorney General of "honor, integrity and freedom from self-interest" is indispensable to maintaining standards of which our nation can be proud. An Administration with a deep belief in affirmative government -- a deep belief that government is a noble calling to help build a more equitable society -- such an Administration will not tolerate sullying its work with unethical actions. But an Administration that holds that Government is part of the problem rather than a means of affirmative government for the benefit of all, has less motivation to protect the processes of such government from being tarnished. An Attorney General with the highest ethical standards is more necessary today than at any time in my fifty years in Washington.

What is at stake here is not only the ethical standards of the next Attorney General, crucial as that is, but the ethical standards of the Senate of the United States. Confirmation of Mr. Meese for the highest legal post in the nation can only mean that the Senate is unwilling, for whatever reason, to reject the propriety of a high government official accepting large financial favors from those seeking substantial government appointments and in varying degrees supporting those appointments. In the light of the Independent Counsel's Report, no one, including Mr. Meese, can deny that that is what happened. This is corroborated by a staff report of the Office of Government Ethics. The Senate's refusal to condemn such conduct but, instead, validating it by confirmation, would be as much a reflection on its own ethical standards as on Mr. Meese's. We ask that the nomination be rejected.

* * * * * * * * *

A number of organizations in the Leadership Conference do not take positions supporting or opposing confirmations of federal officials, and for that reason do not join us in this testimony. The Anti-Defamation League has specifically requested that it not be listed as concurring in the testimony.

Mr. RAUH. I think this is the most important matter that will be before this body this year, and I think the idea of railroading this through tonight is, as I said, an absolute outrage.

What you are doing is considering the ethics of the Nation, not just of Mr. Meese. It's your own ethics. If you approve Mr. Meese, what you are saying is, you would do what he did. And let me tell you, I don't believe a Senator of the United States ought to vote for Mr. Meese unless he's willing to say, I would do that, too.

I wonder if there really are a majority of Senators that would do that. You don't need to use pejorative words about ethics or other things. The fact of the matter is that no one ought to be Attorney General who, as a leading official of the administration, took financial favors from someone seeking financial favors.

It doesn't matter whether he was involved in it or not. An interest-bearing loan, a loan without security is a gift. And a man who is as close to the White House, to the power in this country, ought not be taking gifts.

It is true that he also participated, but I don't rest my case on that. I say the standards of this country are higher than to make an Attorney General out of a man who accepted financial favors from one who was seeking a post with the Government.

That is wrong whether he did anything or not about it. It's not just a question of how much did he do about it. I happen to think that Senator Hatch's hit-and-run attack on Archie Cox was one of the most vulgar things I have ever seen.

Senator HATCH. Now, wait a minute!

Mr. RAUH. When Archie Cox was here, he didn't question him on these points. He waited until Mr. Cox got out of the room. He couldn't face Mr. Cox, who is a lot better lawyer.

So what did he do? He waited until Archie got out of the room and then he went after him. I'm shocked that a person would do that and if you've got any questions, don't ask them about me. Don't ask them after I leave. I'd rather have them while I'm still here.

Senator HATCH. Mr. Chairman, a point of personal privilege.

The CHAIRMAN. Senator, would it suit you just as well to let him get through his presentation?

Senator HATCH. I would like a point of personal privilege on that comment.

The CHAIRMAN. Go ahead. We won't count this time against you, Mr. Rauh.

Senator HATCH. I've known you for a long time, Mr. Rauh. We differ widely, but you've always been fair. Now, first of all, neither did General Rogers nor myself attack Archie Cox. I said I didn't ask him any questions because he didn't come in here and back up his report. He came in here and said what he said.

That's the reason. I was prepared to go through every detail in the Stein report with him, but I didn't need to because he came in and told what he did. He didn't find the problems that his own report said he found.

I didn't attack Archie Cox. Had he come in and backed up that report, I would have gone through every detail with him, because I felt that it was wrong. Maybe I'm wrong, but I don't think so. I challenge you to read the Stein report and then read what Common Cause wrote about it.

I have to admit, from the beginning of these hearings, that I found great fault with Common Cause, which represents itself as a public interest group that is representative of the public.

I think they have high standards of conduct they should meet, too, but I don't think they met them here. I've said that from the beginning of these hearings. There's nothing new about that, and there was nothing new in the interchange between General Rogers and myself.

Nor did I skip out of here so I couldn't listen to you. I'm here. I respect you and the fact we differ. I'm here to listen to you. But don't accuse me of attacking Archibald Cox, because had he come in and tried to back up the report he would have had a lot of questions from me. It's just that simple. But he didn't. He did what I felt he believed was absolutely right in ignoring this report for the most part.

Mr. RAUH. You kept referring to the Common Cause report as a hatchet job.

Senator HATCH. That's correct.

Mr. RAUH. Archie Cox is chairman of Common Cause, and Archie Cox would not have permitted a hatchet job ever to be performed on anyone.

Senator HATCH. That did shock me that he, as chairman, would allow that to go out. However, he didn't say that here today.

Mr. RAUH. Well, why didn't you ask him about that if you were going to accuse him of having an organization which gave a hatchet job——

Senator HATCH. I have brought it up throughout these hearings, Joe.

Mr. RAUH. If you accused the Leadership Conference——

Senator HATCH. You try your cases in one way and I'll be a Senator in another. I think I've been fair, and I think I've commented straightforwardly. I won't back down to anybody. Just read the report and compare it to what they say, and look how they've ignored the facts. I think you'll have a little different attitude yourself.

I don't know if you've read the report.

Mr. RAUH. I have read a good deal of the report.

Senator HATCH. Read it all.

Mr. RAUH. I've read all of the Common Cause report, and I've read a good deal to check it with the other. I found it very accurate.

Senator HATCH. You and I disagree.

Mr. RAUH. And I must say the greatest inaccuracy this afternoon was not anything of Archie Cox; it was Bill Rogers trying to imply over and over again that the independent counsel had anything to do with propriety and ethics, as Senator Heflin made so clear in reading to Mr. Rogers that the independent counsel report is a totally different thing. It has nothing to do with ethics. It has nothing to do with propriety.

It has to do with legality. And this is getting to be quite a situation where you go after it, try to show he went further than he went.

I'm saying that one of the most shocking things in this whole fight is the way you have all grabbed onto the independent counsel's report as though it had something to do with propriety and ethics.

It does not. But what's happened here is that you pulled the thing out of context. It was never intended to have anything to do with propriety or ethics, and you know it.

And yet here was Rogers, sitting here, trying to get away with it. Thank God for Senator Heflin being here and straightening the record out.

Senator HATCH. It is the factual basis of this case, and you can't ignore that. That's all I'm pointing out. Look at the facts. Look at the facts as found by the report. That's all I have to say. I certainly didn't want to be characterized the way you were characterizing me.

The CHAIRMAN. Mr. Rauh, on account of the interruption, I'll give you 3 more minutes.

Mr. RAUH. Thank you very much. I must say that getting 3 minutes to argue for the ethics of a nation based on 50 years of experience inside the government and a student of the government I don't consider very generous.

I will, however, not turn it down. I'm not a guy who cuts off his nose to spite his face. I accept the 3 minutes simply because I have no choice.

But I really believe for a Senate, this great Senate and this great committee with all of the history that it's had, to try to railroad this thing tonight is really quite shocking. Indeed, Senator Metzenbaum, I misunderstood him, I guess. He said it was arranged that we would go on in the morning. But I guess he wasn't successful in so arranging it. But that was what he gave me to understand here when you were not in the room when Senator Hatch was there.

Ethics are as important today as at any time in the history of the last half century. You see, if there is a deep belief in affirmative government as a noble cause, very few people would sully it.

What you had in the Roosevelt administration was beauty in government because people believed in it. Us young kids would have tarred and feathered anybody who took a present the way Meese took these loans. We loved the government. We thought it was something good that it could do wonderful things.

Now, there is a kind of a feeling that government is the problem. Well, if government is the problem, people have less interest in defending, in saving that government from being tarnished. I think the Attorney General at this time is more important than at any time in the last 50 years.

And yet we are trying tonight to rush through from the people who know the most about this—look, I've got wonderful colleagues here who have a lot more to say than 5 minutes. Bob Drinan will tell you in plenty of time. But never was there a time in the history of this period—and I just say, I just happen to be the oldest—there never was a time in the history of this period when it was more important we have an Attorney General with standards.

I'll accept any kind of words you want. These are Biden's words. And I thought if he wanted to put it this way, this man's blind to standards. He takes favors from people who want favors. What's the difference whether he got him the job or not? The whole idea that you would accept a gift—and don't give me any of this that the McKean thing wasn't a gift. It was a loan unsecured; that's a gift. It was a loan with the interest put off for a year; that's a gift.

So don't—I'll tell you this: Meese took a lot more from the nine people who got jobs than Sherman Adams ever took from Bernard Goldfine. That's a fact, and it has nothing to do with whether he, in fact, did something for them.

I happen to think he did. I think he helped McKean get the job; I think he helped Barrack; I think he helped them. But I don't put it on that. It is wrong to take favors from people seeking favors.

As a matter of fact, it is probably wrong to take favors. Probably wrong to take gifts

I'll tell you who I was brought up on was Paul Douglas. He wouldn't take it unless you could walk away with it in your stomach. He was a guy who wouldn't accept it.

The standards in this country are going down and this railroading tonight is just to help it go down.

The CHAIRMAN. Your time is up.

Ms. Althea Simmons, director of the NAACP Washington Bureau. Ms. Simmons, we'd be glad to hear from you.

STATEMENT OF ALTHEA T.L. SIMMONS

Ms. SIMMONS. Mr. Chairman and members of the committee, I am Althea T.L. Simmons, director of the Washington Bureau of the NAACP.

The CHAIRMAN. Would you like to put your entire statement in the record?

Ms. SIMMONS. I would, please.

The CHAIRMAN. The entire statement will be put in the record.

[The following statement was received for the record:]

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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TESTIMONY

OF

ALTHEA T. L. SIMMONS

DIRECTOR, WASHINGTON BUREAU

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

BEFORE THE

SENATE JUDICIARY COMMITTEE

ON THE NOMINATION OF

EDWIN MEESE, III

JANUARY 29, 1985

Mr. Chairman and members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People. I thank you for this opportunity to appear and present testimony on behalf of our organization.

The NAACP is the nation's oldest and largest civil rights association with more than 2100 branches and youth units in the fifty states and the District of Columbia.

We oppose the nomination of Edwin Meese, III to be Attorney General of the United States.

It was one of our most renowned and oft-quoted Founding Fathers, Thomas Jefferson, who wrote in the Declaration of Independence that "We hold these truths to be self-evident...that all men are created equal," and that they are endowed by their creator with certain inalienable rights. Thus, equality and justice for all have been long-established American ideals.

The Justice Department has a unique position in our governmental structure. Its daily actions have profound impact on all segments of American society. It is the protector of rights and the enforcer of our laws. Its policies and decisions affect matters from civil rights to anti-trust policy, from the FBI to criminal prosecution, from drug enforcement to all forms of crime. It plays a central role in the appointment of judges at all levels of the Federal judiciary.

The NAACP is concerned that in a four year span only two blacks have been nominated by the Administration (one of the two was elevated) to Federal judgeships. The reason for such "oversight" was explained by Mr. Meese in his confirmation hearings last year, in response to a question from Senator Kennedy. Mr. Meese stated that it was difficult to find women and minorities with requisite qualifications to be Federal judges. If the White House with its vast network and Mr. Meese and other advisors were unable to find blacks with the requisite qualifications, we wonder if an Attorney General Meese at the Justice Department would have the same difficulty. Mr. Chairman that leads into my next point. The Justice Department has systematically denied the National Bar Association, which is 60 years old and is the black equivalent of the American Bar Association, the opportunity to have any input, such as that accorded to the American Bar Association, with reference to Judicial nominations. The National Bar Association, has been told by people in the Justice Department, that it (the National Bar Association) is a special interest group which will have to go by the American Bar Association.

The National Bar Association was formed when black lawyers were denied membership in the American Bar Association and it has a long and distinguished history. The NAACP would like to know whether or not an Attorney General Meese would avail himself of input from this professional organization that is no more a special interest group than the American Bar Association is.

The Attorney General, as the nation's chief prosecutor, lawyer to the Executive Branch and supervisor of the Federal Bureau of Investigation, must be above reproach in enforcing the laws equitably.

Who can forget the central role of the Attorney General in the Watergate tragedy? Who can forget the broad feeling that the Nation's trust in itself had to be restored through making the office of Attorney General above reproach? It is absolutely essential that the Attorney General be a person of unchallenged integrity, commitment and credentials.

The Attorney General is a symbol of justice as well as a person, an office as well as an officeholder. In a society committed to civil rights for all, it is essential that such a symbol be one of moral and legal leadership. Mr. Meese's past record demonstrates none of these qualifications. His confirmation could only send the nation's youth-black and white-the message that what counts in this nation is not high standards of professional and moral excellence, but contacts and cronyism.

The NAACP opposes Mr. Meese precisely because we believe he is not the symbol and reality of professional and moral leadership. Unless thoroughly refuted in these hearings, the record firmly indicates that Edwin Meese, III has been and continues to be involved in activities offensive not only to millions of black Americans but to all who value equality and justice. Mr. Meese's record demonstrates that he lacks the commitment to ensure that laws are fully enforced and too often encroaches upon the powers of Congress and the Supreme Court. At best, Mr. Meese's actions demonstrate that he does not completely accept the constitutional power of Congress to make the laws, and of the Supreme Court to interpret the law. At worst, Mr. Meese and others in the Reagan Administration deem themselves above the law and able to trample over it by using ingenious schemes devised to deny constitutional rights to some of the Nation's peoples.

The NAACP's opposition to Mr. Meese rests on three main grounds: his insensitivity and apparent prejudices, his constitutional views, and his lapses of personal judgment. Each of these areas demonstrate Mr. Meese's unsuitability for the office of Attorney General.

The Political Prejudices of Edwin Meese

One of the best examples of Mr. Meese's political biases and insensitivities at work is his role in the tax exemption shift. Since the early 1970's, it has been well-established law that the government could not grant tax exempt status to schools which discriminate on the basis of race. Apparently, Mr. Meese and others in the Administration were unhappy with this policy. Rather than asking the Congress to enact new legislation or the courts to reverse past rulings, the Administration announced on January [illegible], 1982 that it would no longer deny tax exempt status to schools like Bob Jones.

After the storm of criticism emerged, the President, Mr. Meese and others began a series of contradictory explanations. First, Mr. Meese and other top officials denied for days that Mr. Reagan had any direct involvement in the decision. They depicted the issue as a matter that originated with Treasury and Justice

Department officials. On January 20, 1982 the White House acknowledged that President Reagan personally gave instructions in the Administration's controversial decision. Mr. Meese was quoted in the press as saying that everyone in the White House knew about it but he had "nothing to do with the decision." Eventually, the Reagan Administration in toto backed off, and subsequently, the Supreme Court repudiated the Administration's legal position by an 8-1 vote. Three pertinent concerns were clearly revealed in this issue:

(1) Mr. Meese appeared more than willing to refuse to enforce the law if he disagrees with that law.

(2) Mr. Meese showed a lack of candor in answering queries concerning actions he had taken. While White House sources reported his involvement in the issue for over a month, Mr. Meese engaged in "double speak" about approving the decision but never giving "full approval," and certainly he indicated nothing for the record showing that he said these things should not be done or that he did his best to stem the tide.

(3) While in a voting rights case, the Supreme Court decided that the Constitution of the United States prohibits simple-minded, as well as sophisticated attempts to negate the 15th Amendment, we believe this ruling applied to all civil rights laws, Mr. Meese and others were attempting to use a carefully-engineered obfuscation to deny the rights of blacks.

Another example of Mr. Meese's political bias at work is his leadership in the Administration's opposition to the Voting Rights Act in 1982. Mr. Meese pushed unsuccessfully for weakening amendments in the extension of this popular act. The NAACP believes that Mr. Meese thinks and acts primarily in political expedient terms rather than in legal or moral terms required of an Attorney General. This to us is amply demonstrated by his statement in an interview for The National Journal where he explained his position by saying "I think our original position on the Voting Rights Act extension...was about as courageous as anybody in the Republican party or with anything resembling a conservative constituency was willing to take in 1981." The issue of Voting Rights is not one to be decided by what's good for the Republican party or a conservative constituency, but what guarantees equal voting rights for all.

Then we have the case of Mr. Meese's successful efforts to destroy the independence and objectivity of the U.S. Commission on Civil Rights. The once independent monitor of civil rights has been, to our way of thinking, transformed into a mouthpiece of the Administration rather than its serving as a conscience of the Nation.

Still another example of Mr. Meese's biases is his three unsuccessful attempts to destroy the Legal Services Corporation. He led the Administration's drive to cut the Legal Services Corporation budget, arguing instead for tax breaks to private attorneys who supervise third year law students working for the poor.

In addition, Mr. Meese is responsible for the Administration's repeated efforts to circumvent the constitutional responsibilities of the Senate by making recess appointments to the Corporation Board, thus allowing the Administration's chosen people to run the Corporation without Senate confirmation. To this day, there is not one corporation board member appointed by the Reagan Administration who has been confirmed by the Senate.

The NAACP urges the Committee to thoroughly investigate Mr. Meese's involvement in Mr. Reagan's attack on legal aid in California in the early 1970's. Although Mr. Reagan vetoed federal financing for California Rural Legal Assistance, Republican judges from outside California rejected Mr. Reagan's charges that CRLA attorneys incited student and prison unrest, and restored the CRLA's funding. Mr. Meese is the principal cited in numerous newspaper reports as being the chief official responsible for this attempt to truncate legal services for California's poor.

The list of cases demonstrating Mr. Meese's insensitivity to the poor, minorities and women could be expanded. If time permitted, we could discuss Mr. Meese's support of tuition tax credits and the potential damage to public schools these credits would cause; his insensitive remarks on the hungry in our Nation; his support for narrowing the scope of Title IX of the 1972 Education Amendments; his role in the politically disastrous Administration plans to cut Social Security benefits; his statements in the political crossfire concerning taxing the unemployed; his disingenuous reference understating the dangers of nuclear war; and his unfair characterizations of the Professional Air Traffic Controllers organization. I shall offer, with the permission of the Chairman; articles from the newspapers and journals which discuss Mr. Meese's role in all issues referred to in my testimony.

I am convinced that we have not heard the full story of Mr. Meese's involvement in these matters. If Mr. Meese feels he took the legally correct position in issues such as the Bob Jones fiasco, the Legal Services battle, etc., then he is in a position to explain his position to this Committee. If Mr. Meese still claims to have no role in some of these issues, did he just stand idly by?

Mr. Meese's Constitutional Views

A second area of Mr. Meese's record which is extremely troublesome to the NAACP is that so much of what seems to matter to Mr. Meese is utterly inconsistent with long-settled constitutional law. For example, Mr. Meese believes the New York Times' publication of Pentagon Papers was no different from "receiving stolen property and selling it for profit." Government employees who leak classified documents to reporters are guilty of "betraying this country" Mr. Meese declared on "Meet the Press" in 1981. He has supported a lifetime censorship system for officials who handle highly sensitive information. While the President's counselor understandably does not want to encourage leaks, Mr. Meese's rigid authoritarian stance contradicts basic values of a free and open society, values enshrined in the First Amendment.

Similarly, Mr. Meese denounced the American Civil Liberties Union as a "criminal agent" for convicts in 1977. While the NAACP may not agree with each and every decision of the ACLU, or any other group, it is unquestioned that the ACLU is a strict defender of the Bill of Rights, sometimes defending the right of free speech for groups unpopular with NAACP such as the Klu Klux Klan. Yet, Mr. Meese's opposition to watchdog groups dedicated to protecting constitutional rights for all is consistent for one who would apply laws selectivley. For example, Mr. Meese encouraged the President to pardon two FBI officials convicted by a jury for authorizing illegal break-ins during the Nixon Administration while he proposed a preventive detention law for some accused of federal crimes.

Mr. Meese has pushed vigorously for rolling back the Fourth Amendment by gutting the exclusionary rule, which bars the introduction of evidence seized during an illegal search. He apparently feels like Louis XIV, who declared "I am the law." For example, Mr. Meese spearheaded the Administration's drive to jail draft registration resisters, then defied a court order to testify in the case of 21-year old David Wayte, who was being prosecuted for resisting. In 1969, sheriff's deputies killed a man during the People's Park Demonstration in Berkeley. According to news accounts, Mr. Meese told interviewer Robert Sheer that the man "deserved to die."

In short, what is striking about a potential Meese attorney generalship is not its likely conservative cast, but its potential radical cast in discarding long-settled constitutional principles. Even the conservative oriented Chicago Tribune titled its editorial on the failure of President Reagan to nominate a person who would do his job according to the impersonal, non-partisan imperatives of the rule of law, "Dangerous Attorney General."

Lapses of Mr. Meese's Personal Judgment

Beyond Mr. Meese's political prejudices and constitutional views, the NAACP has serious questions about his personal judgment. We urge the members of this Committee to explore the following matters thoroughly before deciding whether or not to confirm Mr. Meese as Attorney General.

First, are the questions remaining to be answered surrounding the $60,000 loans; Mr. Meese's sale of his California house, and the nomination and confirmation of Mr. John McKean, Mr. Meese's personal accountant, who arranged the no collateral loans.

Second, the circumstances of Mr. Meese's promotion to Army Reserve Colonel have yet to be fully explained to our satisfaction. Given the difficulties blacks have encountered in receiving promotions in our Armed Services on the basis of claims of lack of qualifications, a full examination of the administrative actions in this regard is necessary.

Third, can we expect Mr. Meese to uphold the law without regard to political influence, given his record as a "corporate fixer" in the White House. We remind the Committee that in 1982 Mr. Meese helped set up a $1000-a-crack "President's Club" to benefit the conservative Heritage Foundation in Washington, D.C. In a letter endorsed by Mr. Meese, contributors were promised "an access to Washington policy makers which cannot be had at any price...you will find your membership fee returned to you many times over." The NAACP believes that this was improper use of his White House post. In addition, this sale of political influence was tax deductible.

Fourth, in 1972 Mr. Meese came under investigation by state officials for appropriating two government cars intended for field use by undercover law enforcement officials. News accounts state that the California Legislature's Auditor General, William Merrifield, called it a misuse of government property.

Fifth, we urge the Committee to question Meese concerning reports that he worked as a personal lobbyist for the Police Officers Association in 1965-66 while he served as Deputy District Attorney for Alameda County, California. Reportedly the California Board of Supervisors stopped Meese in this activity. We ask that the Committee check into Mr. Meese's expense account as a lobbyist.

Sixth, according to published information available to the NAACP, Mr. Meese has been a board member of the Institute of Contemporary Studies. The ICS has supported the establishment of college newspapers which denigrate blacks, such as the Dartmouth Review. The outgoing President of Dartmouth University, in his final address, referred to the Dartmouth Review as sowing the seeds of racial division. The Committee should check into the ICS, the Scaife Foundation which has supported the ICS and Mr. Meese's connection to these organizations.

Finally, we urge the Committee to seek to determine whether Mr. Meese is too close to the President personally and politically to enforce justice in an independent and even-handed way. Many Republican Senators on this Committee once argued that Mr. Bell was too close to Mr. Carter. The Committee is requested to use no double-standard in this regard, for we do not need a visibly partisan person to be the Nation's top law enforcement officer. The office of the Attorney General requires a person who is fair, equitable and passionate only in his commitment to the law. The NAACP opposes Mr. Meese because we do not believe, nor does his record indicate, he is such a man.

Yet as deeply troubling as Mr. Meese's apparent lack of ethical standards in his financial dealings are, the NAACP's prime concern is Mr. Meese's insensitivity to ethical considerations regarding civil rights. "Civil rights" is not a matter of liberalism versus conservatism, it is a matter of law, morality, and ethics. "Civil rights" is a deep felt commitment and realization in any truly free and democratic nation. The historical failure to impartially administer civil rights laws regardless to race, sex, and other ascriptive characteristics has simultaneously flawed American democracy and created the plight of black and other deprived Americans. Civil rights laws must be enforced to guarantee even minimal equality of opportunity. Thus it is implausible that an Administration truly committed to civil rights would nominate as head of the department that is supposed to enforce civil rights a man who has been so openly contemptuous of civil rights.

Conclusion

Today there are many forces within the Justice Department already dedicated to turning back the clock on civil rights and equal justice. Civil rights violators are not being actively pursued and a number of steps have been taken by the Justice

Department to weaken civil rights protections. These actions include efforts to withdraw support for the school desegregation plan developed voluntarily in Seattle, opposition to affirmative action generally and specifically to plans for the Detroit Police Department; refusal to use remedies that the courts have authorized to redress employment discrimination and general failure to enforce the laws in the area of civil rights. The aforementioned forces will still be in the Justice Department when the new Attorney General assumes office.

Unless the new Attorney General, the chief of that Department, has a firm commitment to uphold the civil rights laws in the Department's area of responsibility, we will see continued retreat instead of progress. We will see once again growing disenchantment with the governmental process of the United States.

The Meese hearings provide this Committee the occasion to begin to halt this retrogression. These hearings provide this Committee the occasion to reassert (or reject) those civic ideals of equality and justice for all that fundamentally define us as a democratic people.

I listened carefully to Mr. Meese last year when he appeared before this Committee. I heard him minimize the significance of his position in the White House and after hearing his evasion of important questions that were asked of him, I am convinced that we have not heard the full story of his involvement in the retrogressive civil rights positions of this Administration; I say to you that that standing alone seems to me to raise a serious question of credibility and argues against rushing this confirmation hearing.

What is conceivable to the NAACP is that in civil rights, as in his financial dealings, Mr. Meese would apply a double standard; one for those less fortunate and another one for people in high places, like himself. His extremist views of civil rights and his attempts to usurp the role of Congress in making laws would help to lead the nation backwards. The current controversy over his more than $720,000 attorney bill, which he would have the government pay even as he seeks to cut the fees of those who provide legal counsel for the poor and for those victorious in civil rights cases, refresh once again the recognition of Mr. Meese's hypocrisy when it comes to justice for all.

Mr. Chairman, members of this Committee, it will be a terrible tragedy, if one of the first votes which is cast by the Senate of the United States in the 99th Congress is an anti-civil rights vote in support of a nominee whose record shows that whatever else he may be qualified for, he is not a suitable candidate for the post of Attorney General.

Edward Bates, the Attorney General in the Lincoln Administration, voiced a standard for the office of Attorney General which the NAACP believes can stand the test of time. Mr. Bates said:

> "The office I hold is not properly political, but strictly legal; and it is my duty above all other ministers of state to uphold the law and resist all encroachments, from whatever quarter, of mere will and power."

Mr. Chairman and members of the Committee, the NAACP urges you to reassert the ideals of equality and justice and give hope to 30 million black Americans and others by voting against the confirmation of Mr. Edwin Meese, III for this important post.

Thank you for this opportunity to be heard in this matter.

Ms. SIMMONS. The NAACP opposes the nomination of Edwin Meese to be Attorney General of the United States.

We rest our opposition on three grounds: One, his insensitivity and apparent prejudices; two, his constitutional views; and, three, his lapses of personal judgment.

Equality and justice for all have long been established American ideals, and it was Thomas Jefferson who said, "We hold these truths to be self-evident that all men are created equal and they are endowed by their Creator with certain inalienable rights."

Black Americans believe in that ideal. The Department of Justice has a unique position in our Government. Its daily actions have profound impact on all segments of American society.

As the protector of rights and the enforcer of our laws, its policies and decisions affect matters from civil rights to antitrust policy. From the FBI to criminal prosecution. From drug enforcement to a central role in the appointment of judges at all levels of the judiciary.

The Attorney General is a symbol of justice as well as a person, an office as well as an office holder.

In a society committed to civil rights for all, it is essential that such a symbol be one of moral and legal leadership. Mr. Meese's past record in our opinion demonstrates none of these qualifications.

The NAACP opposes Mr. Meese precisely because we believe he is not the symbol and reality of professional and moral leadership.

The record made in last year's and the instant hearings do not refute our claims that Mr. Meese has been and continues to be involved in activities offensive, not only to millions of black Americans, but to many who value equality and justice. Mr. Meese's record, in our opinion, demonstrates that he lacks the commitment to insure that laws are fully enforced, and too often encroaches upon the powers of Congress and the Supreme Court.

At best, Mr. Meese's actions demonstrate that he does not completely accept the constitutional power of Congress to make laws and of the Supreme Court to interpret the laws. At worse, Mr. Meese appears to have a double standard, and to deem himself to be above the law and able to trample over it by using clever schemes to deny constitutional rights to some of our Nation's people.

The black community, which the NAACP represents—and an independent poll reports that we represent about 77 percent—does not believe that Mr. Meese would represent its best interests, nor take the necessary actions to ensure that blacks have an equal opportunity under the law.

This assessment is made based on his statements and/or actions during the past 4 years as senior advisor to the Nation's Chief Executive.

Black Americans have been systematically excluded from access to this administration. In addition, there has been an orchestrated attempt to refine, redefine, and/or negate civil rights designed to provide equal opportunity for black Americans.

Mr. Meese's insensitivity to the poor and minorities has been documented, and time will not permit me to go into all of them, but I will go through a few examples based on information from articles and journals which is submitted along with my written statement.

Some of the examples include his position on IRS tax exemptions to Bob Jones University; opposition to the Voting Rights Act, and his explanation in a National Journal interview that, and I quote:

> I think our original position on the Voting Rights Act extension was about as courageous as anybody in the Republican Party or with anything resembling a conservative constituency was willing to take in 1981:

The NAACP submits that the issue of voting rights is not one to be decided by what's good for the Republican Party or conservative constituencies, but by what guarantees equal voting rights for all.

His activities in helping to destroy the independence and objectivity of the U.S. Commission on Civil Rights, attempts to destroy the Legal Service Corporation, his support for tuition tax credits, his support for narrowing the scope of title IX of the Education Amendments, his novel explanation at confirmation hearings last year to a question posed by one of the Senators that it was difficult to find minorities and women with the requisite qualifications to be judges.

We urge this committee to consider whether or not Mr. Meese is too close to the President personally and politically to enforce justice in an independent and even-handed way.

Many Republican Senators on this committee once argued that Mr. Bell was too close to Mr. Carter. The Office of Attorney General requires a person who is fair, equitable, and passionate only in his commitment to the law. We do not believe that Mr. Meese is such a person.

Civil rights is not a matter of liberalism or conservatism. It is a matter of law, morality, and ethics.

I listened very carefully last year to Mr. Meese's testimony, and again this year, and I can say to the committee that the NAACP is not reassured that Mr. Meese will deal equitably with the racial group I represent. Although last year Mr. Meese attempted to minimize the significance of his position in the White House on issues of prime concern to the black community, that demurer does not comport with public statements attributed to Mr. Meese.

The NAACP does not believe that Mr. Meese has a firm commitment to uphold the civil rights laws of this Nation and we believe he will continue, if not accelerate, the process of erosion in civil rights that is now underway in the U.S. Department of Justice.

The NAACP submits that 200 years of inequality to black Americans is more than our fair share. The document on which this country was founded deals with justice and equality not liberalism and conservatism, nor specific political parties. I believe that Edward Bates, the Attorney General in the Lincoln administration voiced a standard for this Office that we believe can stand the test of time.

Mr. Bates said, and I quote:

> The office I hold is not properly political, but strictly legal, and it is my duty above all other ministers of state to uphold the law and resist all encroachments, from whatever quarter, of mere will and power.

Mr. Chairman, and members of this committee, we believe it would be a terrible tragedy if one of the first votes cast by the

Senate in the 99th Congress is an anticivil rights vote in support of a nominee whose record shows that whatever else he may be qualified for, he is not a suitable candidate for the post of Attorney General.

The NAACP believes that Mr. Meese's confirmation could only send a message to the Nation's youth, black and white, that what counts in our Nation is not high standards of professional excellence, and moral integrity, but contacts and cronyism.

Mr. Chairman, the NAACP urges you and this committee to reassert the ideals of equality and justice and give hope to 30 million black Americans and others by voting against the confirmation of Mr. Meese for this important post.

Thank you so much.

The **Chairman**. Thank you, Ms. Simmons. Glad to have you with us.

Our next witness is Father Robert F. Drinan, vice president of Americans for Democratic Action, Washington, DC.

Glad to have you with us, Father Drinan.

STATEMENT OF ROBERT F. DRINAN

Father **Drinan**. Thank you very much, Mr. Chairman and members of the committee. I ask unanimous consent to have my full statement placed in the record.

The **Chairman**. Without objection.

[The following statement was received for the record:]

TESTIMONY OF
ROBERT F. DRINAN, S.J.
VICE-PRESIDENT
AMERICANS FOR DEMOCRATIC ACTION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I APPRECIATE THE OPPORTUNITY TO TESTIFY FOR AMERICANS FOR DEMOCRATIC ACTION (ADA) AT THE CONFIRMATION HEARING OF EDWIN MEESE III TO BE ATTORNEY GENERAL.

I APPEAR BEFORE YOU TODAY AS IMMEDIATE PAST PRESIDENT OF AMERICANS FOR DEMOCRATIC ACTION. ADA, A LIBERAL, INDEPENDENT, POLITICAL ACTION ORGANIZATION, IS A COALITION OF PEOPLE FROM ALL SEGMENTS OF THE NATION, INCLUDING ACADEMICIANS, BUSINESS PEOPLE AND TRADE UNIONISTS, GRASS ROOTS ACTIVISTS, ELECTED OFFICIALS, CHURCH LEADERS, PROFESSIONALS, MEMBERS OF CONGRESS AND MANY OTHERS.

ALTHOUGH ADA GENERALLY BELIEVES THAT A PRESIDENT IS ENTITLED TO THE CABINET OF HIS CHOICE, WE ARE IMPELLED TO OPPOSE THIS PARTICULAR NOMINEE AND URGE THE SENATE TO REJECT EDWIN MEESE III AS ATTORNEY GENERAL.

ADA BELIEVES THAT EDWIN MEESE, GIVEN THE RECORD OF HIS STATED BELIEFS AND HIS PERSONAL AND PUBLIC ACTIONS, IS UNFIT TO BE APPOINTED TO THIS HIGH OFFICE. QUITE SIMPLY, WE BELIEVE THAT EDWIN MEESE WOULD BE UNABLE TO FAIRLY AND COMPETENTLY SERVE AS THE NATION'S CHIEF LAW ENFORCEMENT OFFICER -- NOT BECAUSE HE WOULD REFUSE BUT BECAUSE HIS RECORD HAS SHOWN THAT HE IS INCAPABLE OF PERFORMING THIS CRUCIAL TASK. EDWIN MEESE DOES NOT POSSESS THE SENSE OF JUSTICE NOR THE UNDERSTANDING OF FUNDAMENTAL CONSTITUTIONAL PRINCIPLES NECESSARY TO AN ATTORNEY GENERAL. WE BELIEVE THAT AN ATTORNEY GENERAL MUST HAVE A OBLIGATION TO FOLLOW NOT JUST THE LETTER OF THE LAW, BUT MUST BE COMMITTED TO HONOR THE SPIRIT OF THE LAW AS WELL. THE RECORD SHOWS THAT EDWIN MEESE LACKS THAT COMMITTMENT.

While there are many reasons why Mr. Meese should not be confirmed, which have been detailed by ADA and other groups in previous testimony to this Committee, we wish to focus today on one compelling reason that has not been stated previously:

- Edwin Meese is disqualified from being Attorney General as he has clearly violated a federal law that as Attorney General he would be sworn to uphold. Because of this violation, the President is under a statutory obligation to remove Mr. Meese from his current position as Counsellor to the President.

Mr. Meese has violated both the letter and the spirit of a non-criminal federal statue, 5 U.S.C. Sec.7351, which prohibits any federal employee from "accept[ing] a gift from [another federal] employee receiving less pay than himself." This violation occurred because, according to the undisputed facts, Mr. and Mrs. Meese accepted the interest-free use of a $15,000 loan from Mr. Edwin W. Thomas for over a year while Mr. Thomas was on the federal payroll as Mr. Meese's deputy, from January 21, 1981, to February, 1982. The value of this gift was several thousand dollars -- the cost that would have been incurred by the Meeses if they had had to pay market interest rates for the use of this sum of money during that period.

Because of this violation, the President is under a statutory obligation to remove Mr. Meese from the federal service. 5 U.S.C. Sec.7351. Furthermore, because this is a civil, rather than a criminal statute, Mr. Jacob A. Stein, the Independent Counsel, did not determine whether the violation occurred, under the narrow view he took of his jurisdiction as confined to determining whether there was a sufficient basis for bringing a prosecution for a criminal violation.

THE PERTINENT STATUTE READS AS FOLLOWS:

SUBCHAPTER V-MISCONDUCT

> AN EMPLOYEE MAY NOT--
>
> (1) SOLICIT A CONTRIBUTION FROM ANOTHER EMPLOYEE FOR A GIFT TO AN OFFICIAL SUPERIOR;
>
> (2) MAKE A DONATION AS A GIFT TO AN OFFICIAL SUPERIOR; OR
>
> (3) ACCEPT A GIFT FROM AN EMPLOYEE RECEIVING LESS PAY THAN HIMSELF.
>
> AN EMPLOYEE WHO VIOLATES THIS SECTION SHALL BE REMOVED FROM THE SERVICE.
>
> (PUB. L. 89-554, SEPT. 6, 1966, 80 STAT. 527.)

MR. MEESE HAS ADMITTED THAT MR. THOMAS MADE AN INTEREST-FREE LOAN OF $15,000 TO MRS. MEESE SEVERAL WEEKS BEFORE GOING ON THE FEDERAL PAYROLL AS MR. MEESE'S DEPUTY, AND THAT THE $15,000 WAS NOT REPAID UNTIL APPROXIMATELY 2½ YEARS LATER IN JUNE OF 1983. MR. MEESE CONCEDED THAT HE WAS AWARE OF THE LOAN. THE LOAN WAS NOT FORMALIZED BY ANY WRITTEN INSTRUMENT AND THERE WAS NO AGREEMENT CONCERNING WHEN THE LOAN WOULD BE REPAID. IT WAS, THEREFORE, REPAYABLE ON DEMAND -- A SO-CALLED DEMAND LOAN.

THERE IS NO VALID TECHNICAL DEFENSE TO THIS VIOLATION. THE FACT THAT THE MONEY WAS DELIVERED TO HIS WIFE RATHER THAN MR. MEESE HIMSELF IS NOT SUFFICIENT TO EVADE THE PLAIN MEANING OF THE STATUTE, SINCE MR. MEESE KNEW OF THE LOAN, AND MR. AND MRS. MEESE'S ASSETS WERE NOT SEGREGATED. THE MEESES WERE, MOREOVER, RESIDENTS OF CALIFORNIA, A SO-CALLED COMMUNITY PROPERTY STATE IN WHICH HUSBAND AND WIFE HAVE AN EQUAL OWNERSHIP INTEREST IN ALL PROPERTY ACQUIRED BY EITHER OF THEM DURING THE MARRIAGE.

Nor is it a technical defense that the money changed hands a few weeks before Mr. Meese and Mr. Thomas went on the federal payroll. In a recent case under the gift tax law, the United States Supreme Court has made it clear that when the donor allows the recipient to retain the use of money under an interest-free demand loan, the gift is continuing in nature and consists of the forbearance over a period of time from asking for the money back. Dickman v. Commissioner of Internal Revenue, 104 S.Ct. 1086 (1984).

In footnote 7 of that opinion, the Court explained how a person's repeated failure to require the return of an interest-free loan is a taxable gift as follows:

> In order to make a taxable gift, a transferor must relinquish dominion and control over the transferred property. Treas. Reg. Sec. 25.11-2(b), 26 CFR Sec. 25.2511-2(b) (1983). At the moment an interest-free demand loan is made, the transferor has not given up all dominion and control; he could terminate the transferee's use of the funds by calling the loan. As time passes without a demand for repayment, the transferee, and the gift becomes complete. See ibid.; Rev. Rul. 69-347, 1969-1 Cumm.Bull. 227; Rev.Rul. 69-346, 1969-1 Cum.Bull.227.

Accordingly, a substantial part of the gift occurred during the 13 months while Mr. Thomas was on the federal payroll as Mr. Meese's deputy, during which time he permitted the Meeses to retain the interest-free use of the $15,000.

Mr. Meese's conduct violated not only the letter, but also the spirit of the statute. The statute obviously is intended as a safeguard to prevent federal employees from seeking favoritism, or feeling under pressure to seek favoritism, from their superiors in the government, who are

IN A POSITION TO GIVE THEM DESIRED OR UNDESIRED WORK ASSIGNMENTS, TO AUTHORIZE THEM TO TRAVEL AT GOVERNMENT EXPENSE, TO RECOMMEND THEM FOR AWARDS OR PROMOTIONS, TO APPROVE OR DISAPPROVE VACATION SCHEDULES, TO RECOMMEND THEM FOR OTHER JOBS THAT THEY MAY DESIRE, ETC. THE STATUTORY POLICY APPLIES JUST AS FULLY TO FORBEARANCE FROM ASKING THAT A DEMAND LOAN BE REPAID AS IT DOES TO ANY OTHER FORM OF GIFT BY A SUBORDINATE FEDERAL EMPLOYEE TO HIS SUPERIOR.

MR. MEESE'S MISCONDUCT IN VIOLATING THIS FEDERAL STATUTE, THEREFORE, UNDER THE TERMS OF THE STATUTE ITSELF, REQUIRES THE PRESIDENT TO REMOVE HIM FROM ANY POSITION IN THE FEDERAL SERVICE, INCLUDING HIS PRESENT POSITION AS COUNSELLOR TO THE PRESIDENT. IT CERTAINLY DISQUALIFIES HIM FROM SERVING AS ATTORNEY GENERAL OF THE UNITED STATES.

THE ATTORNEY GENERAL IS THE CHIEF LEGAL OFFICER OF THE NATION, ITS HIGHEST LAW ENFORCEMENT OFFICIAL, AND, ASIDE FROM THE SUPREME COURT JUSTICES AND THE PRESIDENT, THE GOVERNMENT OFFICIAL WITH THE GREATEST RESPONSIBILITY FOR UPHOLDING THE CONSITITUTION AND FEDERAL LAWS. A PERSON WHO IS A "LAWBREAKER" SHOULD NOT BE ATTORNEY GENERAL OF THE UNITED STATES.

IN VIEW OF THE FOREGOING, ADA MAKES THE FOLLOWING RECOMMENDATIONS:

* FIRST, THE COMMITTEE SHOULD URGE THE PRESIDENT TO WITHDRAW MR. MEESE'S NOMINATION FOR ATTORNEY GENERAL AND TO REMOVE HIM FROM HIS POSITION AS COUNSELLOR TO THE PRESIDENT AS REQUIRED BY LAW.

* SECOND, IF THE PRESIDENT REFUSES TO DO THE FOREGOING, THE COMMITTEE SHOULD RECOMMEND THAT THE SENATE REJECT MR. MEESE'S NOMINATION AND TAKE ALL APPROPRIATE STEPS TO ENSURE THAT MR. MEESE IS REMOVED FROM THE FEDERAL SERVICE.

Father DRINAN. Americans for Democratic Action believes that Edwin Meese is unfit to be appointed to this high office.

Quite simply, we believe that Edwin Meese would be unable to fairly and competently serve as the Nation's chief law enforcement officer, not because he would refuse, but because his record has shown that he is incapable of performing this crucial task.

Mr. Meese does not possess the sense of justice nor the understanding of fundamental constitutional principles necessary to an Attorney General.

Mr. Chairman, if I may, I want to make one point that has not previously been made. There are many reasons why Mr. Meese should not be confirmed. They have been detailed by many organizations and by ADA. But let me focus on one reason that has not, as I said, been emphasized before.

Mr. Meese is disqualified from being Attorney General since he has clearly violated a Federal law that as Attorney General he would be sworn to uphold. Let me read the precise language of 5 title United States Code section 7351.

That language says that an employee may not accept a gift from an employee receiving less pay than himself, and that if we want to see how strongly the Members of Congress felt about this, look at the penalty: An employee who violates this section shall be removed from the service.

Mr. Meese has violated both the letter and the spirit of that particular section which prohibits any Federal employee from accepting a gift from another Federal employee receiving less pay than himself.

Mr. and Mrs. Meese received an interest free loan of $15,000 from Mr. Edwin Thomas for over a year while Mr. Thomas was on the Federal payroll as Mr. Meese's deputy. The value of this gift was several thousand dollars, the cost that would have been incurred by the Meeses if they had had to pay market-rate interest on this loan.

Because of this violation, the President is under a statutory obligation to remove Mr. Meese from the Federal service. This point was hardly considered in the report of Independent Counsel Stein, because he concentrated very strictly on criminal matters, and this is a civil matter.

One can quarrel, saying, well, Mr. Thomas came on the payroll a few days after this loan was made. The loan check was dated January 7, 1981 and Mr. Meese technically got onto the payroll on January 21, 1981.

However, it seems clear to me that this loan was going on for many months, and that it violates the very spirit of what the law intends.

A technical defense could be made that maybe Mrs. Meese received the loan. But California is a community property State, and I do not believe, Mr. Chairman, that that technicality can hide the fact that this loan was a violation of Federal law.

Mr. Meese's conduct violated not only the letter but also the spirit of the law.

The statute, obviously, is intended as a safeguard to prevent Federal employees from seeking favoritism or feeling under pressure to seek favoritism from their superiors in the Government superiors who are in a position to give them desired or undesired work assignments.

Mr. Chairman, the Attorney General is the chief legal officer of the Nation, its highest law enforcement official, and aside from Supreme Court justices and the President, the Government official with the greatest responsibility for upholding the Constitution and Federal laws.

Mr. Chairman, let me quote two conservatives:

These are not liberals who are opposing Mr. Meese; there is a wide spectrum of people, like myself who served in Congress, who helped to write this law on independent counsel. This is a nonpartisan issue.

The moral principle is summarized by Senator Goldwater who long ago took the lead in pressing for Sherman Adams' resignation. He said this: "There is much more to the high standard required of public officials than merely staying within the law."

And if one sentence can sum up what ADA and millions of people in this country believe, it is the statement of Mr. William Safire, a White House aide under President Nixon. He wrote these words in connection with Mr. Meese's nomination, and with this I close:

> Mr. Meese should withdraw because he made mistakes that must not be assumed as right, because whatever the explanation, the pattern that emerged of lenders who were patronage recipients must be treated as unethical.

Thank you very much, Mr. Chairman.

The **Chairman**. Thank you, Father Drinan. We're glad to have you with us.

Now, the last witness on this panel, listed here, is Arnoldo S. Torres, national executive director, League of United Latin American Citizens, known as LULAC, Washington, DC. Now, you are not Mr. Torres, are you?

STATEMENT OF JOSEPH M. TREVINO

Mr. **Trevino**. No, sir; I am not. My name is Joseph Trevino.

The **Chairman**. Are you representing this group?

Mr. **Trevino**. Yes, sir; I am. I am director of legislation for LULAC.

The **Chairman**. All right. We'll let you testify in his place.

Mr. **Trevino**. I appreciate that.

The **Chairman**. Now, would you want to put your entire statement in the record?

Mr. **Trevino**. Yes, I meant to ask that.

The **Chairman**. Without objection, your entire statement may go in the record.

[The following statement was received for the record:]

League of
United Latin
American Citizens

Office of National President
MARIO G. OBLEDO

STATEMENT OF JOSEPH M. TREVINO, DIRECTOR OF LEGISLATION
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC)
ON THE NOMINATION OF EDWIN MEESE III TO THE POST OF ATTORNEY GENERAL

TUESDAY, JANUARY 29, 1985

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THIS COMMITTEE. GOOD AFTERNOON. THANK YOU FOR THE OPPORTUNITY TO EXPRESS THE VIEWS AND CONCERNS OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), THIS COUNTRY'S OLDEST AND LARGEST HISPANIC MEMBERSHIP ORGANIZATION, ON THE CONFIRMATION OF MR. EDWIN MEESE III AS THE ATTORNEY GENERAL OF THE UNITED STATES. FIRST, I WOULD ASK THAT THE TEXT OF MY ORAL COMMENTS AND THE WRITTEN STATEMENT OF MR. ROBERT L. GNAIZDA, FORMER DEPUTY DIRECTOR AND DIRECTOR OF LITIGATION OF CALIFORNIA RURAL LEGAL ASSISTANCE, BE INCLUDED IN THE RECORD. I WILL ATTEMPT TO SUMMARIZE MY COMMENTS IN THE THREE MINUTES AFFORDED ME BY THE COMMITTEE.

SECOND, I WOULD REAFFIRM LULAC'S TESTIMONY AND REMARKS PRESENTED TO THIS COMMITTEE LAST YEAR DURING MR. MEESE'S INITIAL CONFIRMATION HEARINGS. MR. CHAIRMAN, ONE OF THE DRIVING FORCES WHICH PROMPTED THE FOUNDERS OF LULAC TO ORGANIZE IN 1929 WAS THE APPARENT INDIFFERENCE AND UNRESPONSIVENESS OF GOVERNMENTAL AGENCIES TO THE STRUGGLE OF HISPANIC-AMERICANS FOR EQUAL PROTECTION OF THE LAW AND OTHER BASIC CONSTITUTIONAL PROTECTIONS. THE PAST SEVERAL DECADES HAVE MADE IT EXCEEDINGLY CLEAR THAT THE NATION'S ATTORNEY GENERAL CAN AND HAS DONE MUCH TO AMELIORATE BOTH PAST AND PRESENT INEQUITIES. UNFORTUNATELY, TOO MANY POLITICALLY AND ECONOMICALLY DISENFRANCHISED PERSONS ARE PAINFULLY AWARE OF THE REALITY THAT THE CONTRARY CAN AND HAS BEEN TRUE.

AS A CONSEQUENCE OF INFORMATION REVEALED DURING THE SENATE JUDICIARY COMMITTEE HEARINGS ON THE MEESE NOMINATION, AN INVESTIGATION OF POSSIBLE CRIMINAL CHARGES AGAINST MR. MEESE WAS INITIATED BY THE DEPARTMENT OF JUSTICE. IT IS A MATTER OF RECORD THAT THE PRELIMINARY INVESTIGATION BY THE DEPARTMENT OF JUSTICE LED TO THE APPOINTMENT OF AN INDEPENDENT COUNSEL AS REQUIRED BY THE ETHICS IN GOVERNMENT ACT. THE INDEPENDENT COUNSEL CONCLUDED THAT THERE WAS "NO BASIS... FOR THE BRINGING OF A PROSECUTION AGAINST MR. MEESE FOR THE VIOLATION OF A FEDERAL CRIMINAL STATUTE."

IT IS NOT OUR INTENTION TO RE-HASH THAT WHICH HAS BEEN THE SUBJECT OF THE INDEPENDENT COUNSEL'S INVESTIGATION.

HOWEVER, WHILE THE INDEPENDENT COUNSEL FOUND NO CRIMINAL MISCONDUCT ON MR. MEESE'S PART, THE SPECTRE OF ETHICAL INSENSITIVITY LINGERS. A REVIEW OF THE FACTS REPORTED BY THE INDEPENDENT COUNSEL ON SEVERAL OF THE ALLEGATIONS INVESTIGATED, SUPPORTS THE CONCLUSION THAT ELEMENTARY ETHICAL STANDARDS PRESCRIBED FOR PUBLIC EMPLOYEES, NO LESS THE ATTORNEY GENERAL, HAVE BEEN DISREGARDED.

OTHER WITNESSES HAVE MADE THE POINT THAT MR. MEESE, IN MIXING PUBLIC APPOINTMENTS AND RECOMMENDATIONS WITH PRIVATE FINANCIAL DEALINGS, HAS CREATED THE APPEARANCE OF ETHICAL INSENSITIVITY, THUS MISSING WHATEVER OPPORTUNITY HE COULD HAVE HAD IN STIMULATING EXEMPLARY AND AGGRESSIVE ADVOCACY ON BEHALF OF ALL THE PEOPLE AND LAWS OF OUR COUNTRY.

LULAC SHARES THESE CONCERNS.

LULAC ALSO SHARES THE BELIEF THAT THE PRESIDENT IS ENTITLED TO NAME THE ATTORNEY GENERAL OF HIS CHOICE.

LULAC SUPPORTS MR. MEESE'S STRONG LAW ENFORCEMENT ORIENTATION AS A MEANS TO A MORE CRIME FREE SOCIETY. HOWEVER THE ATTORNEY GENERAL MUST ALSO AGGRESSIVELY ENFORCE OTHER LAWS EQUALLY AS IMPORTANT: CIVIL RIGHTS, AFFIRMATIVE ACTION, EQUAL JUSTICE, EQUAL EMPLOYMENT, HOUSING AND IMMIGRATION.

FOR TOO LONG AND ALL TOO OFTEN, LAW ENFORCEMENT IN THIS COUNTRY WORKED TO THE DETRIMENT OF HISPANICS AND OTHER MINORITIES RATHER THAN TO THEIR BENEFIT. LULAC CARES WHO IS CONFIRMED AS ATTORNEY GENERAL OF THIS COUNTRY.

THE MOTIVE FORCE UNIFYING CIVIC MINDED HISPANIC

Americans in South Texas was the desire to eliminate systematic disenfranchisement at the ballot box, abuse and excessive use of force by law enforcement officials, denial of access to public places and separate but equal schools.

Hispanics not only endured these injustices, they demonstrated their patriotism time and time again whenever our country called. We have endured mainly because of a deep rooted belief in a just society and in a government that ensures justice for all. The Attorney General is entrusted with the responsibility of balancing the interests of all citizens, not only those with whom he is familiar, to ensure that justice has fertile ground upon which to spread its roots.

An Attorney General who is shrouded with the spectre of unethical conduct cannot and will not command both the requisite public trust and respect from those to whom he will inevitably delegate responsibility.

A review of the record, including the recent findings by the Office of Government Ethics, indicates a pattern of unethical conduct and not a mere mistake. It is our opinion that the U.S. Attorney General should be held to a higher standard; therefore, the record standing alone before the Committee should prohibit someone from becoming U.S. Attorney General, particularly if the public perception is such that the public trust is not behind the person in the office of Attorney General. This spectre of unethical conduct on behalf of self and mutual interest, coupled with the painful history of neglect of the disenfranchised, does not engender public trust.

Mr. Chairman, permit me to share some of LULAC's concerns that would fall under the jurisdiction of the Attorney General.

Today, as in LULAC's founding years, there is a move to disenfranchise the voter who cannot meaningfully participate in the electoral process without the use of

BI-LINGUAL BALLOTS. THE VOTING RIGHTS ACT OF 1982 REQUIRED 369 JURISDICTIONS TO PROVIDE BALLOTS IN LANGUAGES OTHER THAN ENGLISH WHERE: (1) MORE THAN 5% OF THE CITIZENS OF VOTING AGE ARE MEMBERS OF A SPECIFIED LANGUAGE GROUP, AND (2) THE LANGUAGE GROUP'S ILLITERACY IS HIGHER THAN THE NATIONAL RATE.

THE DEPARTMENT OF JUSTICE, WITHOUT PUBLIC HEARINGS, STUDIES, INVESTIGATIONS OR EVIDENCE THAT WARRANTED SUCH A DECISION, EXEMPTED 209 OF THOSE JURISDICTIONS.

THE DECISION WAS IMPLEMENTED AT A MOST INOPPORTUNE TIME, AFTER THE PRIMARIES BUT BEFORE THE GENERAL ELECTIONS. WE WILL NEVER KNOW HOW MANY CITIZENS COULD NOT MEANINGFULLY PARTICIPATE IN THE GENERAL ELECTION BECAUSE THE DEPARTMENT OF JUSTICE DID NOT MONITOR THE IMPACT OF THEIR DECISION.

TODAY, AS IN LULAC'S FOUNDING YEARS, HISPANICS AND OTHER MINORITIES WHO HAVE THE MISFORTUNE OF BEING APPREHENDED OR PURSUED BY POLICE OFFICERS ACROSS THE COUNTRY ARE AT RISK OF BEING VICTIMIZED BY EXCESSIVE USE OF FORCE. FOR EXAMPLE, LAST YEAR IN DALLAS, TEXAS (THE SITE OF THE REPUBLICAN CONVENTION) 18 PERSONS WERE SHOT BY POLICE. TEN OF THEM DIED. OF THOSE 18, ALL BUT ONE WERE HISPANIC OR BLACK. ALL OF THE POLICE OFFICERS WERE WHITE. IN THE LAST FOUR YEARS, 114 PEOPLE HAVE BEEN SHOT BY DALLAS POLICE, 91 OF THEM BLACK OR HISPANIC.

LULAC AND OTHER COMMUNITY GROUPS BROUGHT THIS DRASTIC SITUATION TO THE ATTENTION OF THE PRESENT ATTORNEY GENERAL. TO THIS DATE WE HAVE NOT HEARD A REPLY. LULAC CAN ONLY HOPE THAT THIS IS NOT THE TYPE OF LAW ENFORCEMENT WHICH CAN BE CONSIDERED BALANCED OR STRONG.

SHORTLY AFTER THESE SHOOTINGS WERE BROUGHT TO THE ATTENTION OF THE ATTORNEY GENERAL, THE CRIMINAL JUSTICE SUBCOMMITTEE OF THE HOUSE OF REPRESENTATIVES, HEADED BY CONGRESSMAN JOHN CONYERS, CONCLUDED THAT RACISM APPEARS TO BE A MAJOR FACTOR IN ALLEGED POLICE MISCONDUCT SPECIFICALLY, AND IN POLICE-COMMUNITY RELATIONS GENERALLY. THE SUBCOMMITTEE, IN ITS REPORT, ACCUSED OFFICIALS OF TAKING THE PROBLEM LESS THAN SERIOUSLY IN RECENT YEARS.

TODAY, AS IN LULAC'S FOUNDING YEARS, HISPANIC YOUTH ATTEND HIGHLY SEGREGATED SCHOOLS. REPORTS HAVE FOUND THAT OVER TWO-THIRDS OF ALL HISPANICS ATTEND SCHOOLS WITH STUDENT BODIES THAT ARE MORE THAN 50 PERCENT MINORITY, AND THAT THE SCHOOLS HISPANICS ATTEND ARE USUALLY OVERCROWDED, POORLY EQUIPPED OR HAVE LOWER, PER PUPIL BUDGETS THAN OTHER SCHOOLS IN ADJACENT AREAS. IT APPEARS THAT DESEGREGATION WITH ALL DELIBERATE SPEED IS ON A SLOW TRACK FOR HISPANIC YOUTH, AND THAT THE DEPARTMENT OF JUSTICE AND THE ATTORNEY GENERAL CONTROL THE GOVERNOR.

FOR TOO LONG, MR. CHAIRMAN, INS ENFORCEMENT ACTIVITIES HAVE PLACED AMERICAN CITIZENS AND LEGAL RESIDENTS OF HISPANIC ANCESTRY AT A DISADVANTAGE BECAUSE OF PHYSICAL AND LINGUISTIC SIMILARITIES WITH SUSPECTED UNDOCUMENTED WORKERS. THE CASE BOOKS ARE REPLETE WITH INSTANCES WHERE CIVIL RIGHTS HAVE BEEN BLATANTLY DISREGARDED, YET, ENFORCEMENT PRACTICES REMAIN RELATIVELY UNCHANGED. THOSE WHO FEEL THAT THEY HAVE BEEN UNFAIRLY SINGLED OUT AND PROSECUTED CAN WELL EMPATHIZE WITH THOSE HISPANIC AMERICAN CITIZENS.

LULAC HAS OTHER CONCERNS REGARDING THE IMMIGRATION AND NATURALIZATION SERVICE, AN AGENCY UNDER THE ATTORNEY GENERAL'S AUTHORITY. RECENTLY, THE UNITED STATES AND CUBA SIGNED AN AGREEMENT RELATING TO IMMIGRATION ISSUES. WHILE LULAC APPLAUDS THE AGREEMENT AS PROOF OF WHAT NEGOTIATIONS AND DIALOGUE CAN PRODUCE, WE FEAR THAT AN OVERANXIOUS AGENCY, SUCH AS THE INS, COULD RETURN LEGITIMATE REFUGEES TO A COUNTRY AND SYSTEM OF GOVERNMENT NO ONE HERE SUPPORTS, WITHOUT EVERY OPPORTUNITY FOR CONSIDERATION CONSISTENT WITH OUR SYSTEM OF DUE PROCESS OF LAW.

MR. CHAIRMAN, I THANK YOU FOR THE OPPORTUNITY TO SHARE THOSE CONCERNS THAT EXIST IN THE HISPANIC COMMUNITIES. SINCE THE CONCERNS RIGHTFULLY FALL UNDER THE AREA OF RESPONSIBILITY OF THE PRESENT ATTORNEY GENERAL OR HIS SUCCESSOR.

IN CLOSING, MR. CHAIRMAN, THE QUESTION BEFORE THE COMMITTEE IS NOT WHETHER THE PRESIDENT IS ENTITLED TO NAME HIS CHOICE FOR U.S. ATTORNEY GENERAL -- OF COURSE HE IS. NOR IS THE QUESTION WHETHER MR. MEESE, AS AN ATTORNEY WITH EXPERIENCE IN GOVERNMENT, IS QUALIFIED TO HEAD THE DEPARTMENT OF JUSTICE. RATHER, THE QUESTION IS WHETHER MR. MEESE HAS THE MORAL INTEGRITY TO BE THIS NATION'S CHIEF LAW ENFORCEMENT OFFICER. LULAC'S POSITION IN NO WAY REFLECTS ANY POLITICAL PARTISANSHIP, RATHER, IT IS A CONCERN THAT WITH SIGNIFICANT CIVIL RIGHTS PROBLEMS CONFRONTING THE HISPANIC COMMUNITY, THERE CANNOT BE ANY DOUBT AS TO THE ETHICAL BEHAVIOR OF THE SECOND MOST IMPORTANT LAW ENFORCEMENT OFFICER IN THE COUNTRY. SADLY AND UNFORTUNATELY, MR. MEESE HAS BEEN ASSOCIATED WITH SO MANY QUESTIONABLE ACTIVITES OF UNETHICAL BEHAVIOR THAT THE INDISPENSABLE PUBLIC TRUST IS NON-EXISTENT.

IT IS OUR OPINION THAT THE U.S. ATTORNEY GENERAL SHOULD BE HELD TO A HIGHER STANDARD, THEREFORE, THE RECORD STANDING ALONE BEFORE THE COMMITTEE SHOULD PROHIBIT SOMEONE FROM BECOMING U.S. ATTORNEY GENERAL.

LULAC, ABSENT THIS FACTORS, SUPPORTS THE IDEA OF THE PRESIDENT BEING ENTITLED TO NAME HIS CHOICE. NOTWITHSTANDING THIS DIFFERENCE OF OPINION, LULAC, AS ALWAYS, STANDS READY TO CO-OPERATE IN FURTHERING THE INTEREST OF OUR COUNTRY.

THANK YOU.

The CHAIRMAN. Now, you may proceed for 5 minutes.

Mr. TREVINO. Thank you, Mr. Chairman.

Mr. Chairman, distinguished members of this committee, good afternoon.

Thank you for the opportunity to express the views and concerns of the League of United Latin American Citizens, this country's oldest and largest Hispanic membership organization on the confirmation of Mr. Edwin Meese as the Attorney General of the United States.

First, I would ask that the text of my oral comments and the written statement of Mr. Robert Gnaizda, former deputy director and director of litigation for California Rural Legal Assistance be included in the record.

I will attempt to summarize my comments in the 5 minutes afforded me by the committee.

Senator HATCH [presiding]. Without objection, we'll place those in the record.

[The documents referred to above follow:]

A LONG HISTORY OF ETHICAL VIOLATIONS:
FROM 1970 TO THE PRESENT

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE

BY

ROBERT L. GNAIZDA

Former Deputy Director and Director of Litigation
Of California Rural Legal Assistance

January 28, 1985

On Behalf Of:

League of United Latin American Citizens
Mexican American Legal Defense and Educational Fund
Public Advocates, Inc.

A LONG HISTORY OF ETHICAL VIOLATIONS: FROM 1970 TO THE PRESENT

TESTIMONY SUBMITTED BY ROBERT L. GNAIZDA[1]

DEAR MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

This testimony is submitted on behalf of the League of United Latin American Citizens, Public Advocates, Inc., and the Mexican American Legal Defense and Educational Fund[2] as you reconsider Mr. Meese's fitness to be Attorney General.

Fourteen years ago, Mr. Meese falsely branded lawyers who sought free school lunches for the poor, as permitted by law, as engaged in unethical conduct. It is ironic that he now comes before you being charged with unethical conduct for seeking free home and stock loans as not permitted by law.

We believe that the Common Cause analysis of the Independent Counsel's Report that Mr. Meese's "past conduct shows, however, that he is blind to the ethical standards and obligations required of a public official" is sufficient to deny confirmation. However, we think it is also appropriate to examine his past conduct while a high public official to see whether recent conduct as a top Presidential aide is part of a history of either deliberate unethical conduct or an inability to comprehend minimal ethical standards. In this context, we wish to present to you a brief summary of the actions Mr. Meese took against California Rural Legal Assistance attorneys during the period 1970-71, when he was then-Governor Reagan's Chief of Staff and considered by many to be the *de facto* governor.

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[1] Mr. Gnaizda is a graduate of Yale Law School (Class of 1960), headed the Salinas office of California Rural Legal Assistance from 1966-68, and was Deputy Director and Director of Litigation for CRLA from 1968-71. He founded Public Advocates, a public interest law firm, in 1971. He is presently a partner at the firm and national legal counsel to the League of United Latin American Citizens. From 1977-80, he was the elected Republican representative for the California State Bar on the Federal Judicial Selection Commission, and was unanimously elected by the State Bar Board of Governors to a second term on this Commission.

[2] The League of United Latin American Citizens is the nation's largest Hispanic membership organization; the Mexican American Legal Defense and Educational Fund is the nation's largest Hispanic legal advocate; and Public Advocates is a national public interest law firm representing the disadvantaged and based in San Francisco.

During this period, Mr. Meese launched a highly visible all-out witch hunt against the legal reputations of forty-four California attorneys. This included specific public attacks on *ethical* grounds against these attorneys for pursuing cases to secure free school lunches and housing for the poor, as permitted by law.

As set forth in this testimony, President Nixon, in 1971, appointed a commission of three prominent Republican State Supreme Court judges to investigate Mr. Meese's 127 charges of unethical conduct. They found his charges to be utterly false, recklessly made, and causing "totally unjustified attacks upon [the] professional integrity and competence" of forty-four CRLA attorneys for the poor.

> "The [Nixon Judicial] Commission expressly finds that in many instances the [Meese/Reagan Report] has taken evidence out of context and misrepresented the facts to support the charges against CRLA. In so doing, the [Report] has unfairly and irresponsibly subjected many able, energetic, idealistic and dedicated CRLA attorneys to totally unjustified attacks upon their professional integrity and competence."
>
> (Nixon Judicial Commission Decision (1971) at 88)

BACKGROUND

Meese Involvement In Filing False Charges

By July 1970, Mr. Meese's growing distaste for CRLA's activities and successes induced him to orchestrate an ambitious plan for its destruction.[3] These successes included enlarging the food stamp and school lunch programs, preserving threatened welfare and MediCal benefits, and enhancing the rights and working conditions of farm workers. As Governor Reagan's Chief of Staff, Mr. Meese secured the appointment of Lewis Uhler to the head of the California Office of Economic Opportunity. Mr. Uhler was a good friend of Mr. Meese and a former Yale College and Boalt Law School classmate; he was also a well-known and outspoken member of the John Birch Society. Mr. Uhler's chief function was to conduct an extensive smear campaign against CRLA.[4]

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[3] In 1968, precisely when Mr. Meese first began to attack CRLA, it was selected by the National Advisory Committee for Legal Services (a committee that included the presidents of the American Bar Association and American Trial Lawyers Association), as the outstanding legal service program in the country.

The president of MALDEF referred to CRLA as "Chicano Rural Legal Assistance" in honor of its unique services to Hispanics and the farm workers.

Just as this campaign got underway, a committee of 13 prominent lawyers, headed by retired Supreme Court Justice Tom Clark, completed a comprehensive investigation of CRLA. The Justice Clark Committee found CRLA to be an exemplary program, and determined that charges made against it by the Reagan Administration and by large agri-business interests were untrue. (The Justice Clark findings were consistent with other similarly comprehensive national investigations of CRLA conducted annually since CRLA's inception, including one by the General Accounting Office.)[5]

On December 26, 1970, with full knowledge of the Justice Clark Report, the prior GAO report, and criticisms of his investigatory techniques from the National Legal Aid and Defenders Association -- and after refusing to consider evidence to the contrary[6] -- Mr. Meese publicly filed with the federal Office of Economic Opportunity 127 charges of unethical conduct against CRLA's forty-four lawyers. The charges included fomenting violence in the prisons, stirring unrest in the schools, filing suits solely to harass and intimidate, unlawfully soliciting clients and acting in an unethical fashion.

Most of these charges, if true, could have subjected these young lawyers to strong disciplinary action from the State Bar, including possible suspension and disbarment. And whether true or not, such charges could have caused substantial harm to these lawyers' reputations and prospects for future employment. (Mr. Meese simultaneously submitted these charges to the State Bar, which apparently thought them without sufficient merit to warrant a formal investigation.)

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[4] Sacramento Bee, May 14, 1971, at A4.

[5] A chronology of events and an examination of Mr. Meese's authority during this period are attached as Exhibit A.

[6] Meese refused, for example, to meet with CRLA lawyers or to charge them directly before making the charges public.

At the time Mr. Meese publicly aired these charges, he had been informed by one of the Reagan Administration's own attorneys, Deputy Attorney General William Bradford, that the charges were false and that they should not be filed. Bradford had represented the Administration in many of the CRLA cases at issue. Soon after the Administration ignored his warning and filed the charges, he filed a public letter with the federal Office of Economic Opportunity stating that:

> "The state officials who know the facts told me that the specific charges in it are without foundation . . ."
>
> "It is inexcusable for any public official to charge anyone with dishonesty without having corroborating, unimpeachable evidence to back it up. But this is exactly what state officials have done . . . ."[7]

Bradford then went on to state that he was aware of at least two Reagan attempts to damage CRLA through "clearly unethical" means such as complaining to the State Bar. This was temporarily dropped "because I objected that we had nothing to support such charges . . . ."[8]

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[7] Letter by Bradford to Frank Carlucci, the head of federal OEO, as reported in the Merced Sun Star, January 25, 1971.

[8] Id.

Nixon Judicial Commission Finds Charges False And Damaging To 44 Lawyers' Integrity

As a result of the continuous public airing of Mr. Meese's charges of unethical conduct, and a series of high level meetings of Meese and Reagan with President Nixon, Attorney General Mitchell, Vice President Agnew and federal OEO officials, President Nixon appointed an independent judicial commission to investigate the charges.

The Judicial Commission consisted of three Republicans. Two were retired chief justices of the Maine and Wisconsin state supreme courts and the other a justice on the Colorado Supreme Court. After taking sworn testimony from 166 witnesses in ten cities and reviewing hundreds of documents, this conservative and independent commission unanimously found that the 127 charges of unethical conduct and fomenting of violence and unrest were totally baseless. As documented in its 88-page report and more than 200 pages of accompanying exhibits, the Commission found that:

> "[the] charges of wrongdoing on the part of CRLA set forth in the [Administration's Report] are unfounded and without merit." (p. 82)
>
> "the Commission finds that any charges of impropriety with respect to activities within the prisons are completely baseless. After exhaustive hearings, both at Soledad and San Francisco, not a shred of evidence showing actual misconduct of CRLA has been adduced." (p. 82)
>
> "It should be emphasized that the complaints contained in the [Report] and the evidence adduced thereon do not, either taken separately or as a whole, furnish any justification whatsoever for any finding of improper activities by CRLA." (p. 83)
>
> "The Commission expressly finds that in many circumstances the [Report] has taken evidence out of context and misrepresented the facts to

> support the charges against CRLA. In so doing, the [Report] has *unfairly and irresponsibly subjected many able, energetic, idealistic and dedicated CRLA attorneys to totally unjustified attacks upon their professional integrity and competence*." (p. 88, emphasis added)

> "From the testimony of the witnesses [and all other evidence] the Commission finds that these charges are *totally irresponsible and without foundation*." (p. 88)

The Commission then concluded by commending CRLA as operating in a "highly competent, efficient, and exemplary manner." (p. 88)

During the course of these judicial hearings -- at which Mr. Meese and the Administration *refused to appear* and directly substantiate their charges[9] -- Deputy Attorney General Bradford testified that the Reagan Administration knew that the charges of unethical conduct were false long before they were brought, and that state officials had admitted to him that they knew these charges to be false.

> "I am convinced in my own mind from the facts that I know, that this is a report that state officials issued containing charges that they know are not true."
>
> "And they agreed with me several months before this report was published that these charges were not true. . . ."

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[9] The Judicial Commission frequently and publicly requested that the Administration back up its charges in a judicial proceeding subject to cross-examination. The Administration continuously refused to do so and instead secured independent private lawyers, who did *not* hold themselves responsible for the charges, to participate in the hearings. The Administration, angry at the Commission for requiring it to back up its charges, publicly demanded that the Commission resign or be disbanded. *See* 24 *Hastings Law Journal*, pp. 599-646, for full details of the Commission proceedings.

> "I think that this report is a very bad example of what happens when the philosophy against certain groups overcome people's rationality."
>
> (Rptr. Tr. at pp. 1072-73)

Meese Rewards Unethical Behavior

Despite this conclusive Judicial Commission determination that the charges of unethical conduct were false and baseless, Mr. Meese continued to disseminate these charges. To the best of our knowledge he has never repudiated or apologized for making these charges that could have been so damaging to the careers of forty-four young lawyers. In fact, it appears that he remains proud of these charges. For example, forty-five days after the charges were found to be false by the Judicial Commission, he rewarded his colleague who had prepared the report, Lewis Uhler, with a major promotion to Assistant Secretary of the State Human Relations Agency (the agency that had unsuccessfully opposed CRLA in most of the cases cited in the 127 charges). Over the next two years, Mr. Meese ensured that Mr. Uhler was also appointed to three prestigious gubernatorial task forces, including Chairman of the Governor's Tax Reduction Task Force, which included such illustrous names as Milton Friedman, Peter Drucker, and J. Clayburn La Force.

Violations of Bar Ethical Rules

It should be obvious that Mr. Meese's damaging, baseless and unretracted charges were unfair, unethical and fell below any conception of ethical conduct demanded of even run-of-the-mill lawyers, still less of the Attorney General of the United States.

His conduct also violated established, formal rules of professional conduct, to which the top lawyer in America ought certainly be held. We have attached a brief analysis (Exhibit B) of some of the specific ethical violations implicated by Mr. Meese's conduct, based on the American Bar Association's Model Rules of Professional Conduct and the California Rules of Professional Conduct.

ABA Rule 8.4, for example, provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, misrepresentation, deceit or fraud, or conduct that is prejudicial to the administration of justice. The official Comment to this Rule adds:

> "Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of an attorney."
>
> (Rule 8.4, emphasis added)

Similarly, ABA Rule 4.1 states that a lawyer shall not knowingly "make a false statement of material fact or law to a third person" (emphasis added), while ABA Rule 3.1 comments that a lawyer shall not bring an action primarily for the purpose of "harassing or maliciously injuring a person."

Furthermore, California State Bar Rules and procedures provide that complaints against attorneys made to State Bar officials are the exclusive remedy for charges such as these, that such complaints are confidential unless they result in disciplinary action being taken against the attorney, and that investigations of complaints shall not be public. (Rule 220) Thus, by making his charges of unethical conduct public, rather than privately filing with the State Bar, Mr. Meese also violated the California Bar Rules and procedures.

In considering the impact of Mr. Meese's past conduct on his possible performance as United States Attorney General it is important to note that as California gubernatorial chief of staff, and even as de facto governor, he did not possess a fraction of the power he would have as Attorney General to effectively file and prosecute possibly false charges. In California, the attorney general is a separately elected position and historically has been completely independent from the chief executive.

Had the Attorney General's office been part of the Governor's administration, Deputy Attorney General Bradford's testimony probably would not have surfaced, and it is possible that criminal charges would have been brought against many of the CRLA attorneys, particularly those falsely accused of fomenting violence in the prisons and stirring unrest among high school students.

Because the investigatory and enforcement powers of the United States Attorney General are so vast and their exercise so potentially unaccountable, Mr. Meese's past conduct should give this Committee grave concern.

Conclusion

Regarding Mr. Meese's unethical actions, there appear to be but two conclusions. Each is consistent with the Common Cause analysis of his actions while a top aide to the President. One is that Mr. Meese deliberately disregarded minimal ethical considerations required of public officials and attorneys. The other is no more comforting -- he is so careless or incompetent[10] that he is incapable of conforming to minimal ethical standards.

In conclusion, a person who falsely brings charges against those who seek free lunches for the poor, yet seeks elevation to the highest ethical office despite receiving free loans and stock in violation of his public trust, should not be the symbol of American law enforcement.

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[10] He was unable in approximately fifty instances to recall facts disclosed by the Independent Counsel's Report that cast doubt on his credibility. Los Angeles Times, January 16, 1985, p. 6.

Exhibit A

ED MEESE'S RELATIONSHIP TO LEWIS UHLER AND THE UHLER-REAGAN REPORT ON CRLA*

January 31, 1984

Background

Lewis Uhler and Ed Meese were classmates at Yale College (Class of '55) and Boalt Law School (Class of '58). According to the LA Times reporter who knew Meese well during this period, Ed Meese was a close friend of Lewis Uhler during the period at issue and they socialized on a frequent basis. (Los Angeles Times, January 29, 1984, Part IV, by Bill Boyarsky)

According to the LA Times' Boyarsky, Meese brought Lewis Uhler into the Reagan Administration. "Uhler, a former John Birch Society member ... was considered on the far right.... Uhler had considerable influence because of his close association with Meese...."

Boyarsky specifically states: "The Meese-supported attack on California Rural Legal Assistance was evidence of a strong [Meese] ideology that was later felt in Washington.... And Meese's hostility to legal services continued in Washington with his criticisms of the Legal Services Corporation...."

Uhler was appointed by Reagan-Meese as the head of the state OEO to investigate CRLA on July 2, 1970.** This was at approximately the time that the independent Justice Tom Clark Commission investigated CRLA and found it to be an exemplary program.

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* Prepared by Public Advocates staff.

** Uhler, although not then a member of state government, was named by Reagan to the State Law Revision Commission on January 29, 1968.

Almost immediately after the Nixon-appointed judicial Commission found the Uhler-Reagan report to be without basis, Meese arranged for Uhler to be promoted to Assistant Secretary of the Human Resources Development Agency, the agency that had unsuccessfully fought CRLA on various farm and welfare issues.

On September 1, 1972, Lewis Uhler was made Chairman of the Governor's Tax Reduction Task Force, apparently as the result of Meese's intervention. This was one of Reagan's most prestigious task forces and included such illustrious names as Milton Friedman, Peter Drucker and J. Clayburn La Force, the chairman of Reagan's recent so-called "Hunger Commission".

In 1973, Uhler also became a member of the Governor's criminal task force known as "Public Safety Task Force," which was headed by Ed Meese.

In approximately March of 1973, Lewis Uhler was made a steering committee member of Reagan's Local Task Force on Government Reorganization; Meese was also a steering committee member. (California Journal, January and March, 1973)

General Power of Meese While Chief of Staff for Governor Reagan

Meese was generally considered the alter ego for Governor Reagan between 1970 and 1974. Basically, nothing could get to the

Governor of any importance without going through Meese. (CRLA during the period 1970-71, was a matter that the Governor was openly and heavily involved in.)

As Ed Meese stated in an interview with the California Journal (June 1970) in which he described the operation of his office, no significant matter escaped careful scrutiny by the Governor's Cabinet. The Cabinet was headed both structurally and in spirit by Meese. He says, for example, its function was

> "to make sure the Governor is getting information from as many vantage points as possible ... [and to make sure] the issue is fairly presented and all the alternatives are available to the Governor and where he has a maximum of information concisely organized so that he's not deciding policy on only partial information. There are two or more sides to almost every issue in government and it would be unfortunate if the Governor only got part of the facts, had to make up his mind on the basis of only partial information. I think all of us in the Cabinet, as well as the members of the staff, feel responsibility for an orderly policy-making process, but I feel it particularly keenly.

Meese went on to say

> ... the cabinet is the central focus of policy-making and recommendations of policy decisions to the Governor. We try to utilize the cabinet meetings and the cabinet system in that form so we don't have people trying to make policy by getting the Governor in a situation where he only gets the facts they present.

Ed Meese, as Chief of Staff (February 1969 to December 1974), was the only member of the Governor's staff to serve on the Cabinet. In addition to Meese, the Cabinet consisted of four agency secretaries. It was therefore quite intimate. All issues from department heads must be presented to the Cabinet and generally personal presentations were also required. (California Journal, June 1970).

Some Specifics Regarding Meese and the Uhler-Reagan Report

Meese from 1968 on, when he was the Governor's Legal Secretary, was actively involved in attacking CRLA. For example, on January 8, 1970, Meese personally announced approval of a federal OEO grant to CRLA based on four conditions set forth by the Reagan Administration. (Reagan Press Release #13 for 1970)

On December 26, 1970, Meese sent a letter to federal OEO regarding the Governor's veto and requested a personal opportunity for a personal meeting with federal OEO in order to present evidence in support of the veto.

On December 26, 1970, Meese personally issued a press release on the veto which referred to Meese as announcing the veto of CRLA and informing federal OEO of such.

On December 28, 1970, Uhler held a press conference and announced that he and Meese would go to Washington early the following week to argue the CRLA case.

The LA Times, December 29, 1970, page 17, stated that Meese would act as the go-between for the Reagan Administration on this issue.

On December 30, 1970, Meese publicly announced that Reagan had granted a 30-day extension for CRLA in order to allow federal OEO time to examine the "evidentiary documents to be presented in support of the governor's veto by California OEO Director Lewis K. Uhler and other state officials." (Pres Release #588)

Uhler is referred to as the governor's spokesperson by the

New York Times in an article dated January 3, 1971. The article refers to the fact that CRLA had been praised by the California, Los Angeles, San Francisco and Sacramento bar associations.

According to the Sacramento Bee, January 8, 1971, federal OEO personally called Meese regarding additional documentation it wanted.

On January 26, 1971, according to the Merced Sun Star, State Deputy Attorney General William Bradford made his charges regarding the Uhler-Reagan report public. Bradford charged Uhler with deliberately filing false accusations and admitting that such were false. He further stated that he told them and they admitted that they had no evidence regarding a number of serious charges made against CRLA.

On January 28, 1971, Reagan held a press conference discussing the CRLA issue in detail. Meese spoke at the press conference on CRLA at Reagan's urging. Reagan also admitted that he had a one and one-half hour personal meeting with President Nixon on the CRLA issue during the prior week. (Fresno Bee, January 28, 1971)

According to the January 31, 1971, San Diego Union, Reagan, at voluminous length, discussed CRLA at the National Press Club in Washington, DC and also during the course of his 1971 State of the State address. Reagan set forth in specific detail allegations regarding the Uhler-Reagan report.

According to the LA Times, February 2, 1971, Meese signed a 6-month CRLA extension.

According to the Sacramento Bee, February 5, 1971, Uhler stated that Reagan wished to eliminate all government legal aid plans.

According to the Long Beach Independent, February 27, 1971, Meese spoke at length in Washington, DC regarding CRLA and his personal talk with Frank Carlucci, the head of federal OEO.

According to the Washington Post, April 18, 1971, the State of California intended to boycott all commission hearings, despite all the Commissioners being Republicans.

According to the New York Times, April 27, 1971, the Reagan Administration stated that it would not testify before the Commission.

On April 27, 1971, Reagan held a press conference in which almost two-thirds of the conference was devoted to CRLA. Ed Meese participated at length to defend the Administration against charges of irresponsibility. Meese also discussed their refusal to participate in Commission hearings and/or to substantiate the charges.

According to the New York Times, April 26, 1971, Reagan demanded the resignation of the entire Commission.

On May 18, 1971, Reagan held a press conference partly in response to the Commission ruling that some of the Uhler charges were not valid. Meese answered at least two questions on CRLA. Reagan referred extensively to CRLA, of his distrust of the Commission, and stated that he had no confidence in the Commission. (Oakland Tribune, May 19, 1971)

According to the Los Angeles Times, May 20, 1971, Reagan sent a telegram to Carlucci attacking the Commission and its finding that three of the charges against CRLA were without merit.

According to the Los Angeles Times of May 22, 1971, the Reagan Administration made three strong attacks through the media during the past week on the Commission.

On May 25, 1971, Reagan held a press conference announcing that he had just sent Meese to Washington to meet with Nixon officials about CRLA.

According to the LA Daily Journal, May 26, 1971, Reagan charged CRLA with involvement in the firebombing of the office of an attorney who had criticized CRLA. Reagan claimed the firebombing was to intimidate witnesses and that he was seeking an FBI investigation. However, at the time of making the charge, the Salinas police had informed him that they had picked up the accused and the accused had nothing to do with CRLA.

According to the Santa Ana Register, June 30, 1971, Meese held a press briefing regarding the OEO announcement that the charges against CRLA were false. Meese stated that the Commission Report did not discredit the Uhler-Reagan report. The Register also stated that the California Senate President had asked for Uhler's resignation.

According to the Sacramento Bee, June 30, 1971, this Meese press briefing was attended by Uhler.

On July 1, 1971, Meese sent a letter to federal OEO regarding CRLA refunding.

On August 13, 1971, Uhler was promoted to Assistant Secretary of the State Human Relations Agency (press release #488), the agency that had unsuccessfully opposed CRLA in most of the cases at issue in the Uhler-Reagan report.

Nowhere in the record, either in press articles or public Reagan documents, is there any indication of any kind that Meese and/or Reagan ever repudiated any of the Uhler charges or apologized regarding any of the charges.

Exhibit B

MEMORANDUM

To: Robert Gnaizda

From: Anita P. Arriola

Re: Ed Meese's Potential Unethical Conduct

Date: January 30, 1984

I. AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT (1984)

The most directly applicable rule of professional conduct in this situation is Rule 8.4 "Misconduct". That rule provides "It is professional misconduct for a lawyer to:

> (a) violate or attempt to violate the rules of professional conduct;
>
> (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respect;
>
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (d) engage in conduct that is prejudicial to the administration of justice."

As to "a", it remains to be seen in the discussion following whether Ed Meese has violated any of the rules of professional conduct; "b" does not apply since Ed Meese has not committed a "criminal act". However, "c" and "d" are directly applicable here. In relying and acting upon information known to him to be false, Ed Meese appears to have violated the very letter of Rule 8.4 "c". That is, he has engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

Furthermore, in relying and acting upon information that is known to him to be false and by refusing to cooperate in the investigation of charges against CRLA, Mr. Meese violated Rule 8.4 (d), that is, he has engaged in conduct that is prejudicial to the administration of justice.

The comment to Rule 8.4 is particularly apt here. The comment states, "Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of an attorney." As a public officer, then, Ed Meese is held to a higher standard of professional conduct than an ordinary lawyer.

The following rules of professional conduct are applicable here where, in attacking CRLA, Mr. Meese was doing so on behalf of a client.

Rule 3.1 states "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous." The comment to that rule states, "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause but also a duty not to abuse legal procedure... An action is frivolous if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person."

Rule 4.1 states, "In the course of representing a client, a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person". The comment to that rule states "A lawyer is required to be truthful when dealing with others on a client's behalf... A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false... Misrepresentations can also occur by failures to act."

Rule 4.4 provides, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person."

There is no evidence to suggest that Ed Meese brought charges against CRLA other than to harrass and embarrass the staff at CRLA. Indeed, the evidence that does exist confirms the opposite conclusion. That is, based on information known to him to be false, he pursued such charges against CRLA for the express purpose of harrassing and maliciously injuring such persons at CRLA.

II. CALIFORNIA RULES OF PROFESSIONAL CONDUCT

California has not adopted the Model Rules of Professional Conduct. However, California has adopted its own rules of professional conduct. The only provision directly applicable in this situation is Rule 7-102. That rule provides "A member of the state bar in government service shall not institute or cause to be instituted criminal charges when he knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, a member of the state bar in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, he shall promptly so advise the court in which the criminal matter is pending." (Emphasis added)

This rule relates directly to the accusation by the Governor (Ed Meese) that persons at CRLA were responsible for the firebombing of an opposing lawyer's home allegedly in retaliation for such attorney's participation in the investigation of charges against CRLA. At the time of the accusation, however, a suspect for the firebombing had been apprehended and was known to the Reagan officials.

III. RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

California State Bar disciplinary procedings are governed exclusively by the Rules of Procedure of the State Bar. Schullman v. State Bar of California, 10 C.3d 526, 111 Cal. Rptr. 161 (1973). These rules provide the procedure in which complaints against attorneys are made to State Bar officials and in which investigations and other formal proceedings are followed in order to pursue such complaints. Complaints against attorneys made to State Bar officials are confidential unless they result in disciplinary action being taken against the attorney. Chronicle Publishing Company v. Superior Court of San Francisco, 54 C.2d 548, 7 Cal. Rptr. 109 (1960). Further, the investigation of complaints and other investigations and formal proceedings provided in the rules shall not be public. Rule 220, Rules of Procedure of the State Bar. Except for communications regarding public hearing proceedings, in written communications, the name of the member shall not appear unless and until a recommendation of public reproval, suspension or disbarment is filed with the Clerk of the State Bar Court. Rule 222, Rules of Procedure of the State Bar.

The Rules of Procedure of the State Bar of California therefore provides the exclusive procedure in which complaints against attorneys are filed. The accusations and charges against the attorneys at CRLA involved their professional conduct as attorneys. As such, any complaints against such attorneys should have been filed with the State Bar of California, which provides for procedural protections for the attorneys against whom charges are made. Further, the Rules provide for confidentiality of any and all complaints and information concerning the attorneys to protect the integrity of the Bar and to protect the individual attorney until such complaints or charges are proven to be either true or false. Thus, charges against attorneys at CRLA relating to professional misconduct should have been filed directly with the State Bar of California, and not by airing such charges in public through the press.

Mr. TREVINO. Second, I would reaffirm LULAC's testimony and remarks presented to this committee last year during Mr. Meese's initial confirmation hearings.

Mr. Chairman, one of the driving forces which prompted the founders of LULAC to organize in 1929 was the apparent indifferent and unresponsiveness of governmental agencies to the struggle of Hispanic Americans for equal protection of the law and other basic constitutional protections.

The past several decades have made it exceedingly clear that the Nation's Attorney General can and has done much to ameliorate both past and present inequities. Unfortunately, too many politically and economically disenfranchised persons are painfully aware of the reality that the contrary can and has been true.

It is not our intention to rehash that which the Independent Counsel has investigated. However, while the Independent Counsel has found no criminal misconduct on Mr. Meese's part, the specter of ethical misconduct and insensitivity lingers.

A review of the facts reported by the Independent Counsel on several of the allegations investigated supports the conclusion that elementary ethical standards proscribed for public employees, no less the Attorney General, have been disregarded.

Other witnesses have made the point that Mr. Meese in mixing public appointments and recommendations with private financial dealings has created the appearance of ethical insensitivity, thus, missing whatever opportunity he could have had in stimulating exemplary and aggressive advocacy on behalf of all the people and laws of our country.

LULAC shares those concerns. LULAC supports Mr. Meese's strong law enforcement orientation as a means to a more crime free society. However, the Attorney General must also aggressively enforce other equally important laws, civil rights, affirmative action, equal justice, equal employment, housing and immigration.

For too long and all too often law enforcement in this country has worked to the detriment of Hispanics and other minorities, rather than to benefit them.

LULAC cares who is confirmed as Attorney General of this country. The motive force unifying civic minded Hispanic Americans in south Texas was a desire to eliminate systematic disenfranchisement at the ballot box, abuse and excessive use of force by law enforcement officials, denial of access to public places, and separate but equal schools. These concerns remain, Mr. Chairman.

Hispanics not only endured these injustices. They demonstrated their patriotism time and time again whenever our country called. We have endured mainly because of a deeprooted belief in a just society and in a government that insures justice for all.

The Attorney General is entrusted with the responsibility of balancing the interests of all citizens, not only those with whom he is family, to ensure that justice will have a fertile ground on which to spread its roots.

An Attorney General who is shrouded with the specter of unethical conduct cannot and will not command the requisite public trust and respect from those whom he will inevitably delegate responsibility.

LULAC's concern is that with significant civil rights problems confronting the Hispanic community, there cannot be any doubt as to the ethical behavior of the second most important law enforcement in the country. Sadly and unfortunately, Mr. Meese has been associated with so many questionable activities of unethical behavior that the indispensable public trust is nonexistent.

Let me focus on one specific example, Mr. Chairman. The question of hypocrisy. On the one hand, we have Mr. Meese working aggressively to do away with government-supported legal services for the poor. We have a specific concern in that.

Close to 150,000 Hispanics over the last 3 to 4 years have come to the Legal Service Corporation for help. They would have no where to go if Legal Services as we know it today would not be available.

It is somewhat ironic that on the one hand Mr. Meese seeks to limit the moneys paid to attorneys who work in the public interest, but on the other hand he seeks to obtain over 100,000 times that which we as a country spend every year per American that is indigent—$7.

It is our opinion that the U.S. Attorney General should be held to a higher standard. Therefore, the record standing alone before the committee should prohibit someone from becoming U.S. Attorney General.

In closing, Mr. Chairman, LULAC, absent these factors, supports the idea of the President being entitled to name his choice. Notwithstanding this difference of opinion, LULAC, as always, stands ready to cooperate in furthering the interests of our country.

Thank you, Mr. Chairman.

Senator HATCH. Do you have any questions, Senator?

Senator HEFLIN. Father Drinan, you mention this section, but you didn't mention, and I want you to give us your evaluation. As I understand it, there is an exception from acceptance of a gift from an employee who receives less pay. That if the employee accepts a loan or other thing of value from a friend, when the circumstances make it clear that the personal relationships involved are the motivating factor, then that would be an exception.

Now, I've been reading from something else. It quotes the independent counsel's report. But this goes on to say—this is in this memorandum of the Office of Government Ethics—in which he says that as stated in the Independent Counsel's report, there is substantial uncontradicted evidence that Mr. Meese's offer of the position to Mr. Thomas was based on the longstanding personal and professional relationship between the two men, rather than any financial transaction between them.

It says this evidence includes a series of oral interest-free arrangements between the Meeses and the Thomases over the years, two of which occurred 1½ years before the job offer.

Would you address yourself to that exception?

Father DRINAN. Sir, that may or may not be a valid interpretation. If I read the statute correctly, and I read in the Stein report, the long, long description of the relationship between Mr. Meese and Mr. Thomas, one could quarrel with that interpretation of the exception. We'd have to know more.

Furthermore, Mr. Meese should have been sensitive to this situation. There is a further indication that he didn't report this loan and that he was reminded by Mr. Thomas that he should report it. He said that it slipped his mind.

So there's a whole long series of events that make that particular construction of the law at least ambiguous.

Senator HEFLIN. That's all the questions I have.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. I have no questions.

The CHAIRMAN. Mr. Correia, on behalf of Senator Metzenbaum, do you have any questions?

Mr. CORREIA. Yes, Mr. Chairman. I have two questions that I am conveying from Senator Metzenbaum.

In the interests of time, he asked me to address these to Mr. Rauh and Ms. Simmons.

The first question is this: Based on your experience in Washington and your dealing with Government, what is your view about the public's perceptions of the standards of the ethics of its public officials? What's the trend in those standards? Is it going down? Is it going up?

What do you think the reason for that is?

Mr. RAUH. I tried my hand at that because there's a serious problem. In my view, the ethics of government are going down. And this is not partisan, because I do not think it started recently.

I tried to make this point: That when there is a period that government is considered a noble calling by the people who work for the government, as in its most exciting time in the 1930's, there is less likely to be unethical conduct, first, because of the loyalty of the employees to their cause of a noble government, and, second, because there are other employees that will, as I said earlier, or would have, as I said earlier, tear them limb from limb, where if they were to try to do something that would sully the government.

Let me put it this way: The real shocking thing is how the people are trying to misconstrue the independent counsel's report. President Reagan called it a vindication. How remarkable to say that a man's been vindicated because there is no ground for indicting him.

His lawyers said this is a favorable outcome. Favorable, my neck. It says he shouldn't be indicted. I don't see that that's a favorable outcome. Yes, it's nice not to be indicted. But that's hardly grounds to be Attorney General of the United States.

Mr. Meese, himself, said he was very happy. He keeps saying that up here. Well, I'm glad he's happy he's not being indicted. But that has nothing to do with the standards that are involved.

The standards that are involved—and even, I don't think even the most pro-Meese person such as Senator Hatch will challenge the fact—that Mr. Meese took financial favors, that is, accepted financial gifts from persons seeking something from the Government.

Now, you don't have to say how he participated. The mere fact that the person could use him as a reference is participation.

What I'm saying is that the reduction in ethical standards is shown by the reception of the independent counsel's report. If you think that's enough to clear him and get him out and make him Attorney General, that's your reduction in standards. All I'm saying is the fact that they would even consider an indictment, the fact that a man had done enough to have a—because after all, the Attorney General had to find that there was some reason for getting an independent counsel. The fact that they even had an independent counsel—I'm telling you, if anybody proposed him for Attorney General in the 1930's, he would have gotten laughed right out of this city.

Yes, there is a reduction in standards, and it's going to go down further unless the Senate stands and makes its stand right here.

Ms. SIMMONS. I certainly support what Joe Rauh has just said. Let me give you two examples. When Mr. Meese was up for confirmation hearings last year, it was the first day of a legislative mobilization that we have each year. And we had delegates for that mobilization in the room listening to his testimony. The feedback from those 200-plus persons was negative at that time with reference to the Government and how a nominee, such as Mr. Meese, could be put up for this singular high position. That feedback came from persons from a cross section of this country.

Another example, I recall at the Democratic National Convention in New York, when Mr. Carter was nominated, persons applauded when he talked about values and standards, and didn't applaud about anything else.

And I have received more feedback from our branches across the country with reference to what's happening to the Government in the past 5 years than at any other time that I can remember.

We do believe that standards are going down, that not only must a person be above reproach, but the perception has to be that the individual is above reproach. The perception in the country from persons I've come into contact with, and I speak a lot as we have 500,000 members—is that the Government has sunk to an all-time low and that the Congress does not have the will to do anything about it.

That's the perception that's there.

Mr. **Correia**. I would like to address one other question to the other two witnesses. Most people would say that a President is entitled to a great degree of deference in his choice of Cabinet appointments, including the Attorney General. And opposition on ideological grounds or philosophical grounds is perhaps not justified because the election resolves, to a large extent, the ideology or philosophy of an administration.

What's your feeling about that proposition, and how do you justify your opposition?

Father **Drinan**. If I may speak, Americans For Democratic Action is not opposing him because the ADA is a liberal group. They are opposing him for all of the reasons that have been brought out. There is nothing ideological. And I have made that point, citing William Safire and Senator Goldwater.

This transcends. I'm not speaking for the others. They make speak from their point of view. But ADA, even though it's liberal, is opposing him because in the judgment of ADA he has demonstrated that he does not have the respect for all of the statutory law, all of the laws that get rid of the conflict of interest, that should be present in the chief law enforcement officer of the country.

Ms. **Simmons**. The NAACP is nonpartisan and our opposition rests on the fact that we do not believe that he meets the high standards of office; nor do we believe that he would be fair and equitable to all the Nation's citizens.

Mr. **Rauh**. The Leadership Conference on Civil Rights' position is not—and I repeat—not based on the considerable differences that we have had with the substantive policies and programs initiated and developed by Mr. Meese in his role as coordinator domestic policy for the Reagan administration.

We oppose his nomination because we don't think he would enforce the law on civil rights, and he doesn't have the standards required of the Nation's chief law officer.

We gave, as Althea Simmons made clear, some of the same examples. Bob Jones fiasco, the Legal Services, where after Congress didn't abolish it, they tried to abolish it with recess appointments. You can give many more examples. He tried to gut the Voting Rights Act which meant that the 15th amendment wasn't going to be enforced.

There are many, many cases. We do not base it on our differences of viewpoint—as the chairman made clear in a debate with Senator Kennedy on the first day, the election settled the difference of viewpoint.

What we're saying is he won't enforce the law, and his standards on ethical matters are not adequate.

Mr. **Trevino**. The Hispanic community in general is not known for its liberalness; in fact, it's known for its conservative aspects in many respects.

But the fact of the matter is that LULAC does not take issue with the President naming his choice. Of course, the President is entitled to name the person of his choice. We respect that.

However, we believe that the process which we're all engaged in today—and as Senator Heflin mentioned today earlier—is advice and consent.

That is the purpose precisely of these hearings, to determine whether in fact Mr. Meese, not necessarily based on his qualifications as attorney or government employee, but in fact whether he has the moral integrity to be able to represent that high standard that we should hold for this nation's highest attorney. And that's the Attorney General.

Our organization is a nonpartisan, bipartisan organization, and by that I mean that we have members who are in the Republican Party, and the Democratic Party, and some who are independent.

Our board of directors consists of basically equal representation. Last year's poll, and again this year's poll indicates that our organization and our board of directors opposes Mr. Meese on the standards that I indicated earlier.

Mr. **Correia**. Thank you, Mr. Chairman.

The **Chairman**. All right.

I have a wire here I would like to read at this time. "Because Ed Meese has expressed interest in exploring needs, of addressing the needs and concerns of Hispanics, we, the undersigned, support his nomination for Attorney General of the United States. His 25 years of experience in the legal profession, and as a public administrator highly qualifies him for this position. We are confident that he will fairly represent all Americans."

This is signed by Ricardo Carerra, Jr., LULAC vice president, midwest. Do you know him?

Mr. **Trevino**. Yes, sir. I do very well. In fact, you've just underscored my point. LULAC is a democratic organization. We do have Republicans and Democrats. However, as in a democracy, majority rules.

The **Chairman**. Anthony P. Flores, LULAC vice president, northeast. Do you know him?

Mr. **Trevino**. Yes, I do.

The **Chairman**. Edna Cinino, LULAC vice president, southeast.

Mr. **Trevino**. I know her as well.

The **Chairman**. Oscar Moran. LULAC vice president, southwest.

Mr. **Trevino**. I know him as well.

The **Chairman**. Lillian Gutierrez, LULAC vice president for women.

Mr. **Trevino**. Yes, another one I'm familiar with.

The **Chairman**. Eddie Rodrick. LULAC vice president for youth.

Mr. **Trevino**. True.

The **Chairman**. William Banilla, past national LULAC president.

Mr. **Trevino**. Yes, sir.

The **Chairman**. So you know all these people?

Mr. **Trevino**. I know them all, sir.

The **Chairman**. They all recommended Mr. Meese's confirmation.

Mr. **Trevino**. Yes, sir, but as I stated before, it's a democratic organization. Majority rules.

The **Chairman**. Senator Hatch, do you have any questions?

Senator **Hatch**. Nothing further.

The **Chairman**. Thank you, ladies and gentlemen.

The next panel will be Donald Baldwin, executive director, National Law Enforcement Council, Washington, DC; Chief William Brierly, past president, State Association of Chiefs of Police, Newark, DE; Frank Carrington, executive director of Victims Assistance Legal Organization, Virginia Beach, VA; Robert Kliesmet, national president, International Union of Police Associations, Washington, DC; Roberta Roper, founder, Stephanie Roper Committee, Upper Marlboro, MD.

If you will come around and be sworn.

Where are the other two? There were five I called?

Mr. **Baldwin**. Well, Mr. Chairman, you've worn everybody out. They were here at the beginning, and we had seven of them and we're down to myself and Ms. Roper here.

The **Chairman**. Can you speak for them?

Mr. **Baldwin**. Yes, I will. And I think I'll put some of their——

The **Chairman**. You all just stand and be sworn.

[The witnesses were sworn.]

The **Chairman**. Have a seat.

STATEMENT OF A PANEL CONSISTING OF DONALD BALDWIN, EXECUTIVE DIRECTOR, NATIONAL LAW ENFORCEMENT COUNCIL, WASHINGTON, DC; ROBERTA ROPER, FOUNDER, STEPHANIE ROPER COMMITTEE, UPPER MARLBORO, MD; AND JAMES DEVINE, ON BEHALF OF ROBERT KLIESMET, NATIONAL PRESIDENT, INTERNATIONAL UNION OF POLICE ASSOCIATIONS, WASHINGTON, DC

Mr. **Baldwin**. Mr. Chairman, if I might proceed initially and make a couple of general comments.

The **Chairman**. We'll give you 5 minutes each for your statements, and the questions will be propounded by the Senators. You can put your entire statement in the record.

Mr. **Baldwin**. I think what I would like to do is not make a formal statement, but rather to ask that the statements of the members that are not here and some that will be submitting theirs tomorrow may do this.

In particular, Mr. Bob Kliesmet, president of the International Union of Police Associations will be represented by Mr. Devine.

Mr. **Devine**. That's correct. I have his statement.

The **Chairman**. Do you want to put his statement in the record.

Mr. **Devine**. Yes, sir; I'd like to do that. This is the statement of Robert Kliesmet, international president of the International Union of Police Associations, AFL–CIO.

The **Chairman**. Without objection, that will be made part of the record.

[The following statement was received for the record:]

**INTERNATIONAL UNION
OF POLICE ASSOCIATIONS
AFL-CIO**
THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS
National Headquarters • 815 16th Street, N.W., #307 • Washington, D.C. 20006 • (202) 628-2740

Robert B. Kliesmet
President
David E. Baker
Secretary-Treasurer

Testimony of

ROBERT B. KLIESMET, INTERNATIONAL PRESIDENT
INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO

MR. CHAIRMAN, MEMBERS OF THE JUDICIARY COMMITTEE, I THANK YOU FOR THE OPPORTUNITY TO APPEAR HERE TODAY IN BEHALF OF THE HONORABLE EDWIN MEESE, III, THE PRESIDENT'S NOMINEE FOR THE POSITION OF ATTORNEY GENERAL.

MY NAME IS ROBERT B. KLIESMET. I AM THE PRESIDENT OF THE INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO. I AM ALSO PRESIDENT OF THE INSTITUTE FOR POLICE RESEARCH. I HAVE BEEN A GUEST LECTURER AT HARVARD UNIVERSITY'S KENNEDY SCHOOL OF GOVERNMENT, THE UNIVERSITY OF WISCONSIN - SCHOOL OF SOCIAL WELFARE AND THE LAW SCHOOL, MARQUETTE UNIVERSITY, MELBOURNE UNIVERSITY LAW SCHOOL IN AUSTRALIA, THE F.B.I. ACADEMY, AND AT NUMEROUS SEMINARS, SYMPOSIUMS AND WORKSHOPS. I HAVE CONTRIBUTED TO NUMEROUS PUBLICATIONS CONCERNED WITH POLICING AND LAW ENFORCEMENT. I HAVE ALSO SERVED AS A POLICE OFFICER ON THE STREETS OF MILWAUKEE AND HAVE RECENTLY RETIRED AFTER 28 YEARS OF SERVICE. OUR UNION REPRESENTS SOME 17,000 LAW ENFORCEMENT OFFICERS AND HAS MEMBERSHIP LOCALS IN 29 STATES. WE WORK CLOSELY WITH OTHER ASSOCIATIONS IN ALL AREAS

OF LAW ENFORCEMENT, APPREHENSION, PROSECUTION AND RESEARCH THROUGHOUT THE 50 STATES. WE ARE CONSCIOUS OF OUR HEAVY RESPONSIBILITY BOTH TO ENFORCE THE LAWS OF THIS COUNTRY AND AT THE SAME TIME PROTECT THE CONSTITUTIONAL RIGHTS OF EVERY CITIZEN. IT IS NOT AN EASY TASK. IT IS ONE WHICH CALLS FOR A SYMPATHETIC UNDERSTANDING OF OUR PROBLEMS BY THE DEPARTMENT OF JUSTICE. WE HAVE SOUGHT, AND WILL CONTINUE TO SEEK, THE ADVICE AND GUIDANCE OF THE JUSTICE DEPARTMENT AND THIS COMMITTEE IN THE RESOLUTIONS OF THOSE CONSTITUTIONAL ISSUES THAT SO OFTEN PLAGUE THE POLICE OFFICER ON THE STREET. TO US, AND TO OUR MEMBERSHIP, IT IS OF THE UTMOST IMPORTANCE THAT AN ATTORNEY GENERAL HAVE INTEGRITY AND A KNOWLEDGE OF OUR PROBLEMS. WE FEEL MR. MEESE HAS BOTH.

HIS DISTINGUED RECORD AS A LAWYER, PUBLIC OFFICIAL, EXECUTIVE, AND EDUCATOR CONFIRM OUR BELIEFS. WE WOULD LIKE TO ENDORSE AND SECOND THE EXCELLENT STATEMENT IN SUPPORT OF MR. MEESE SUBMITTED BY DONALD BALDWIN, EXECUTIVE DIRECTOR OF THE LAW ENFORCEMENT COUNCIL AND PLACED ON THE RECORD BACK IN MARCH OF 1984, AND WE WOULD RECOMMEND THAT IT BE RE-READ. IT IS BEYOND QUESTION THAT ANY NOMINEE COULD RECEIVE SUCH WIDESPREAD ENDORSEMENT AND HAVE PERFORMED WITH SUCH EXCELLENCE IN HIS PROFESSION WITHOUT HAVING A DEEP SENSITIVITY FOR CONSTITUTIONAL ISSUES AND AN OVERRIDING CONCERN FOR THE PUBLIC WELFARE.

OUR MEMBERSHIP HAS KNOWN ED MEESE DURING ALL OF THE YEARS HE HAS BEEN IN PUBLIC LIFE. HE HAS APPEARED AND SPOKEN BEFORE NUMEROUS REGIONAL AND NATIONAL MEETINGS OF OUR ASSOCIATIONS, AND ALLIED ASSOCIATIONS IN THE FIELD OF LAW ENFORCEMENT. HIS KNOWLEDGE IN THE FIELD IS IN-DEPTH. HE HAS NOT ONLY EVIDENCED AN UNDERSTANDING OF OUR PROBLEMS; HE HAS TAKEN AN ACTIVE PART IN THE RESOLUTION OF THESE PROBLEMS. WE HAVE NEVER FOUND HIM TO BE ARBITRARY OR CAPRICIOUS. RATHER, WE HAVE FOUND HIS RECOMMENDATIONS TO BE SOUND, ALWAYS DIRECTED TOWARD THE PROTECTION OF THE PUBLIC, WHILE AT THE SAME TIME COGNIZANT OF THE CONSTITUTIONAL LIMITATIONS UNDER WHICH WE ALL OPERATE.

THE DEPARTMENT OF JUSTICE IS A LAW ENFORCEMENT AGENCY. WE POLICE OFFICERS, REGARDLESS OF FEDERAL AND STATE DIFFERENCES, ARE THE ULTIMATE EXTENSION OF THAT AUTHORITY ON THE STREETS WHERE CRIME IS MOST MANIFEST. WE HAVE NOT ALWAYS FOUND A SYMPATHETIC UNDERSTANDING OF OUR PROBLEMS ON THE FEDERAL LEVEL. WE HAVE AT TIMES SENSED HOSTILITY WHICH WE FEEL WAS BASED ON A LACK OF UNDERSTANDING OF THE SITUATIONS WE FACE AND A LACK OF UNDERSTANDING OF OUR NEED FOR BOTH PROGRAMATIC AND LEGISLATIVE SUPPORT.

THE PROBLEMS THAT A POLICE OFFICER ON THE STREET ENCOUNTERS ARE COMPLEX AND NOT SUSCEPTIBLE TO AN EASY SOLUTION. ON THE OTHER HAND, CONSTITUTIONAL DETERMINATIVES MUST BE UNIVERSAL AND MUST BE OBSERVED. THE QUESTION AT ISSUE IN A NOMINATION PROCEDURE SUCH AS THIS, IS WHETHER OR NOT THE LAW ENFORCEMENT OBLIGATIONS OF

AN ATTORNEY GENERAL CAN BE EFFECTIVELY IMPLEMENTED IN THESE BASIC AREAS OF LAW ENFORCEMENT. FROM OUR PROSPECTIVE, THIS IS ALWAYS THE TEST. WE, AS POLICE OFFICERS, ARE IN A WORKING ENVIRONMENT WHEREIN CONSTITUTIONAL QUESTIONS ARE ALWAYS PRESENT. AS A NATURAL COROLLARY, WE SHOULD SEEK AND DO SEEK AS ATTORNEY GENERAL, A MAN WHOSE KNOWLEDGE AND EXPERIENCE IN THE PRACTICALITIES OF LAW ENFORCEMENT COULD ASSURE THAT CONSTITUTIONAL ISSUES WERE PROPERLY PRESENTED FOR SOLUTION. MR. MEESE HAS PROVEN THAT HE HAS THIS CAPABILITY.

WE DO NOT ANTICIPATE, NOR COULD WE EXPECT THAT THE NOMINEE, WOULD ACCEDE TO ALL OF OUR REQUESTS. WE ARE CERTAIN, HOWEVER, THAT OUR PROBLEMS WILL RECEIVE A FAIR HEARING AND AS PUBLIC SERVANTS, WE CAN EXPECT NO MORE AND WE DESERVE NO LESS.

PHILOSOPHICAL HOSTILITY, WHICH MAY APPEAR DURING THIS HEARING SHOULD HAVE LITTLE PLACE IN YOUR CONSIDERATION. THE EXPERIENCE, AND THE CAPABILITY OF THE NOMINEE, AND THE WIDE SUPPORT OF THOSE IN THE FIELD MOST DIRECTLY AFFECTED, SHOULD RECEIVE YOUR SYMPATHETIC UNDERSTANDING. THE POLICE OFFICER ON THE STREET LIVES WITH MORAL AND ETHICAL CONSIDERATIONS EVERYDAY OF HIS WORKING LIFE. HE WOULD BE THE FIRST TO RECOGNIZE THE ABSENCE OF THESE QUALITIES IN ANY NOMINEE.

SINCE THE PASSAGE OF THE LAW ENFORCEMENT ADMINISTRATION ACT, WE HAVE SEEN A GRADUAL IMPROVEMENT IN OUR FEDERAL-STATE RELATIONSHIP IN LAW ENFORCEMENT. THE BENEFICIAL RESULTS HAVE BEEN

MANIFEST IN CRIME REDUCTION ACROSS THE COUNTRY. ED MEESE HAS NOT ONLY BEEN SUPPORTIVE IN MUCH OF THIS ENDEAVOR, BUT HAS BEEN ACTIVE IN ITS IMPLEMENTATION. THIS COMMITTEE, IN ITS DEEP COMMITMENT TO THE PASSAGE OF THE CRIME CONTROL BILL IN THE 98TH CONGRESS, IS FURTHER EVIDENCE OF THE UNDERSTANDING WHICH CONTINUES TO DEVELOP IN LAW ENFORCEMENT ON THE FEDERAL LEVEL. WE ARE CERTAIN THAT THE PRESIDENT'S NOMINEE WILL NOT ONLY CONTINUE THE FORWARD PROGRESS, BUT WILL DO SO IN KEEPING WITH THE FINEST TRADITION OF THE DEPARTMENT OF JUSTICE.

WE WOULD LIKE THE RECORD TO REFLECT THAT BASED UPON HIS OUTSTANDING QUALIFICATIONS WE HIGHLY ENDORSE THE NOMINATION OF EDWIN MEESE FOR THE POSITION OF ATTORNEY GENERAL.

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR AFFORDING US THE OPPORTUNITY TO APPEAR AND TO TESTIFY.

The CHAIRMAN. Who is next?

Mr. BALDWIN. I have also Chief William Brierley, who is past president of the State Association of Chiefs of Police. He called me three times today and I was trying to give him a time. He was willing to drive down from Delaware for the third day, but he had a radio broadcast tonight.

But his testimony he will be submitting. His is particularly important as I'll make reference to later in the general comments.

The CHAIRMAN. Would you like to place his statement in the record?

Mr. BALDWIN. He will be submitting it tomorrow.

The CHAIRMAN. Well, we're not having any hearing tomorrow.

Mr. BALDWIN. Can the record be left open so he can submit it?

The CHAIRMAN. Yes; we can leave the record open until 5 o'clock tomorrow afternoon.

Mr. BALDWIN. I'll call him then tonight and ask him if he can special it down to you.

The CHAIRMAN. Thank you.

[Submissions of Mr. Brierley, subsequently received for the record, follow:]

TESTIMONY OF CHIEF WILLIAM BRIERLEY
NEWARK, DE. POLICE DEPARTMENT

TO: SENATE JUDICIARY COMMITTEE
U. S. SENATE

RE: CONFIRMATION HEARING - MR. EDWIN MEESE, III
ATTORNEY GENERAL DESIGNATE

IT IS A DISTINCT PLEASURE TO HAVE THIS OPPORTUNITY TO ADDRESS THIS PRESTIGIOUS COMMITTEE AS IT DELIBERATES THE CONFIRMATION OF MR. EDWIN MEESE, III, TO THE POSITION OF ATTORNEY GENERAL OF THE UNITED STATES. BY WAY OF DEFINITION, I AM IDENTIFYING MYSELF AS CHIEF WILLIAM BRIERLEY, CHIEF OF POLICE, CITY OF NEWARK, DELAWARE. I AM PAST GENERAL CHAIRMAN OF THE DIVISION OF STATE ASSOCIATIONS, A DIVISION OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE. THIS GROUP REPRESENTS THE 50 STATE CHIEFS OF POLICE ASSOCIATIONS WITHIN OUR NATION AND COMPRISES APPROXIMATELY 17,000 POLICE AGENCIES. LIKEWISE, I HAVE BEEN PRESIDENT OF OUR STATE CHIEFS' ASSOCIATION FOR SEVEN YEARS AND A LAW ENFORCEMENT OFFICER FOR THE PAST 30 YEARS, 15 AS THE POLICE CHIEF EXECUTIVE OF MY UNIT OF GOVERNMENT. ACCOMPANYING MY TESTIMONY WILL BE CORRESPONDENCE FROM THE PRESENT GENERAL CHAIRMAN OF THE STATE ASSOCIATION OF CHIEFS OF POLICE AS WELL AS TWO FORMER GENERAL CHAIRMEN WHO EXPRESSED THE OPPORTUNITY TO HAVE ME INCORPORATE SOME OF THEIR THOUGHTS ABOUT THE ADVISABILITY OF MR. MEESE'S CONFIRMATION AS OUR NEW ATTORNEY GENERAL.

IT IS OUR FEELING THAT OUR PROFESSION IS DEMANDING MORE AND MORE FROM THOSE IN ITS LEADERSHIP AND SOMETIMES WE ARE HARD-PRESSED TO DELIVER. BUT NO MATTER HOW AWESOME THE DUTY TO FIND SOLUTIONS, IT IS ONE WE CANNOT OVERLOOK. SOMETIMES THE CAUSES OF THOSE PROBLEMS ARE AS COMPLEX AS THE SOLUTIONS AND NATURALLY IT IS NOT ALTOGETHER CLEAR WHAT PROBLEMS WE IN THE CRIMINAL JUSTICE FIELD MAY BE CALLED UPON TO FACE AND SOLVE IN THE FUTURE. HAVING SPENT MORE THAN A QUARTER OF A CENTURY IN THE LAW ENFORCEMENT PROFESSION, I HAVE A DEEP ABIDING FAITH AND RESPECT IN OUR PROFESSION AND THE MEN AND WOMEN SERVING IN AMERICAN LAW ENFORCEMENT AND CRIMINAL JUSTICE WHICH INCLUDES OUR PROSECUTORS, CORRECTION OFFICIALS, PAROLE - PROBATION, ETC. WE HAVE A GREAT FAITH IN OUR BASIC INSTITUTION AND WE ARE COMMITTED TO PRESERVING OUR SYSTEM OF JUSTICE AS IT EXISTS. THERE ARE 40,000 LAWS, ORDINANCES, AND STATUTES ON THE BOOKS WHEN BY COMPARISON, REALISTICALLY, WE CANNOT ENFORCE "THE TEN COMMANDMENTS". THEREFORE WE SEE A SOCIETY THAT IS WILLING TO COMPLY WITH THE LAW NOT JUST BECAUSE THEY HAVE TO BUT BECAUSE THEY WANT TO.

IT IS EASY TO THEORIZE SOLUTIONS TO OUR INSURMOUNTABLE PROBLEMS IN THE CRIMINAL JUSTICE ARENA BUT YOU AND I LIVE IN THE REAL WORLD, NOT IN A FANTASY LAND AND WE KNOW ONLY TOO WELL THAT RIGHT DOES NOT ALWAYS PREVAIL. MASSIVE CHANGES ARE CONTINUALLY OCCURRING IN OUR PROFESSION. WE HAVE MADE SIGNIFICANT GAINS AND ACCOMPLISHMENTS WHICH WILL ALWAYS BE IN PLACE. THE CRIMINAL JUSTICE PROFESSION HAS FACED ADVERSITY IN THE PAST AND SURVIVED. JUST AS OUR PREDECESSORS HAVE CONQUERED THEIR CHALLENGES, SO WILL WE. I HAVE COMPLETE CONFIDENCE THAT THE PROFESSIONAL INTEGRITY AND UNSELFISH DEDICATION OF THOSE WORKING IN OUR CRIMINAL JUSTICE PROFESSION WILL SQUARELY MEET AND OVERCOME THE MANY AWESOME CHALLENGES WE WILL BE CALLED UPON TO FACE IN THE FUTURE. WE WILL NEVER COMPROMISE IN OUR DESIRE FOR PERFECTION AND QUALITY OF SERVICE FOR QUALITY MUST BE ALL ENCOMPASSING AND PRIDE IN OUR INDIVIDUAL ORGANIZATIONS IMPERATIVE. WE HAVE EVERY RIGHT TO BE JUSTIFIABLY PROUD OF OUR CRIMINAL JUSTICE ACCOMPLISHMENTS IN THE PAST BUT THERE IS STILL MUCH TO BE DONE. THERE IS NOTHING WRONG WITH RAISING OUR SIGHTS AND ATTEMPTING TO ACCOMPLISH MORE WITH GREATER AND BROADER OBJECTIVES FOR WE MUST NEVER ALLOW A DETERIORATION OF OUR COMMITMENT TO PLAY HARD AND PLAY TO WIN. WE SIMPLY CANNOT ALLOW NEGATIVE ATTITUDES TO PREVAIL. THE TRUE NEED IS TO ACCENTUATE THE POSITIVE FOR TO DO LESS IS TO ADMIT THAT WE ARE WILLING TO ACCEPT SECOND BEST. JUST AS MANY OF THE PROBLEMS IN SOCIETY TODAY CAN BE TRACED TO A BREAK DOWN IN THE FAMILY, SO TOO DOES ANY BREAK DOWN IN OUR PROFESSIONAL CRIMINAL JUSTICE FAMILY CAUSE LASTING EFFECTS. WE AS POLICE OFFICERS KNOW THIS BETTER THAN MOST. SELFISHNESS CANNOT BE ALLOWED TO REPLACE CONCERN FOR OTHERS. EACH AND EVERY MEMBER OF THE CRIMINAL JUSTICE FAMILY MUST BE WILLING TO ACCEPT HIS OBLIGATION AS AN INTEGRAL PART OF THE FAMILY AS A UNIT. OUR

PROFESSIONAL AND ORGANIZATIONS ARE BEING CHALLENGED DAILY AND WE MUST STAND TOGETHER IF WE ARE EVER TO EMERGE VICTORIOUS. THEREFORE WE FEEL OBLIGED TO RETURN TO SOME OF THE BASIC VALUES ESTABLISHED IN FAMILY-HOOD. NONE OF US WOULD EVER STAND IDLY BY AND ALLOW ANYONE TO ABUSE A MEMBER OF OUR FAMILY. SHOULD OUR COMMITMENT TO THE CRIMINAL JUSTICE FAMILY BE ANYTHING LESS? THEREFORE, LET US COMMIT AND RE-COMMIT OURSELVES TO THE HISTORICAL IDEALS OF OUR PROFESSION AND HELP PREVENT ANYONE FROM DOING ANYTHING IN HARM'S WAY AGAINST OUR PROFESSIONAL CRIMINAL JUSTICE FAMILY. LET IT BE KNOWN LOUD AND CLEAR THAT DOMESTIC OFFENSES, INTERNAL OR EXTERNAL, LEVELLED AT OUR FAMILY CARRY WITH THEM CONSEQUENCES AND ABOVE ALL LET'S RECAPTURE THAT COMFORTABLE FEELING THAT IN UNITY NO ONE WILL BLOW OUR HOUSE DOWN.

IN THAT REGARD, I AM VERY GRATEFUL FOR THIS OPPORTUNITY TO PAY TRIBUTE TO MR. EDWIN MEESE WHOM I BELIEVE TRULY POSSESSES ALL THOSE QUALITIES AND ATTIRBUTES WHICH SHOULD SERVE AS A MODEL FOR THE POSITION OF UNITED STATES ATTORNEY GENERAL. I HAVE ALWAYS PERSONALLY HAD THE GREATEST RESPECT AND ADMIRATION FOR THIS INDIVIDUAL WHO HAS SERVED THIS NATION WITH PRIDE AND DISTINCTION. WE IN THE LAW ENFORCEMENT COMMUNITY GREATLY ADMIRE HIS INTEGRITY, DEDICATION TO DUTY AS WELL AS HIS TENACITY AND DEVOTION TO THE FIELD OF LAW ENFORCEMENT. HIS COMPETENCY AND EFFICIENCY HAVE BEEN WELL DEMONSTRATED AND HIS COMMITMENT TO THOSE IDEALS OF A CRIME FREE SOCIETY ARE WELL KNOWN.

AT A TIME IN OUR HISTORY WHEN TERRORISM AND ORGANIZED CRIME THREATENS THE VERY STRUCTURE OF OUR REPUBLIC, IT IS IMPERATIVE TO SELECT THE RIGHT INDIVIDUAL AS THE STANDARD BEARER FOR OUR LAW ENFORCEMENT EFFORTS AND AS ATTORNEY GENERAL OF THE UNITED STATES. YES, MR. MEESE HAS HAD HIS CRITICS JUST LIKE ANYONE WHO HAS SERVED IN HIGH PUBLIC OFFICE BUT I BELIEVE MANY OF THOSE CRITICS WERE UNREASONABLE AND UNKNOWING ABOUT THE MANY CONTRIBUTIONS RENDERED BY THIS INDIVIDUAL. I DO NOT KNOW WHETHER A POLL HAS EVER BEEN TAKEN OR A HEAD COUNT OF HIS FRIENDS AND FOES, BUT I DO KNOW THAT MR. MEESE HAS HUNDREDS MORE FRIENDS THAN ENEMIES AND UNFORTUNATELY HIS FRIENDS HAVE NOT SEEN FIT TO MAKE AS MUCH NOISE AS HIS ENEMIES. IT IS EASY TO ACCENTUATE THE

NEGATIVE AND WHEN DETRACTORS ARE MAKING NOISE, IT IS EASY TO MAGNIFY PETTY ISSUES INTO MAJOR PROBLEMS. AFTER 30 YEARS AS A POLICE OFFICER, I AM SICK AND TIRED OF HEARING THE EXPRESSION "ORGANIZED CRIME". IT IS HIGH TIME WE RESPONDED WITH A DEMONSTRATED EXPRESSION OF "ORGANIZED LAW ENFORCEMENT". OTHERWISE, ARE WE TO BELIEVE THAT CRIME IS BETTER ORGANIZED THAN OUR LAW ENFORCEMENT AND CRIMINAL JUSTICE ORGANIZATIONS WHICH ARE CONSTANTLY WAGING BATTLE WITH THOSE CRIMINAL ELEMENTS THAT WOULD BRING DOWN OUR WAY OF LIFE. BECAUSE OF THE TREMENDOUS RESPECT MR. MEESE ENJOYS IN THE TOTAL LAW ENFORCEMENT COMMUNITY, I BELIEVE HE IS THE ONE TO PUT IT TOGETHER. I HASTEN TO POINT OUT THAT HE DID NOT INHERIT THE TREMENDOUS RESPECT HE HAS IN THE LAW ENFORCEMENT COMMUNITY; HE DID IT THE OLD-FASIONED WAY - HE EARNED IT. HIS OUTSTANDING PERFORMANCE AND COOPERATION TO DATE HAVE BEEN EXEMPLARY AND HE HAS EVERY RIGHT TO BE JUSTIFIABLY PROUD OF HIS PURPOSES AND NUMEROUS ACCOMPLISHMENTS. HIS CONFIRMATION MAY HAVE PROVOKED CONTROVERSY BUT HIS MANY LASTING CONTRIBUTIONS AND DEDICATION TO EXCELLENCE IN LAW ENFORCEMENT SHOULD NOT BE OVERLOOKED FOR IN THE FINAL ANALYSIS, HE IS THE BEST CHOICE FOR THE POSITION OF ATTORNEY GENERAL. HIS ZEAL AND DEDICATION TO THE PURSUIT OF JUSTICE HAS EARNED A DEEP, ABIDING RESPECT OF THOSE GENERAL PRACTIONERS IN OUR CRIMINAL JUSTICE FIELD. HE IS AN INTELLIGENT INDIVIDUAL, EFFICIENT AND PRODUCTIVE AND HIGHLY QUALIFIED FOR THE POSITION HE IS SEEKING. HIS CREDIBILITY, DIGNITY AND DECENCY ARE MOTIVATING FACTORS IN THIS HIGHLY PRODUCTIVE PUBLIC SERVANT. HE HAS OFTEN DISPLAYED A KEEN MANAGEMENT SENSE OF HIGH QUALITY, CONSISTENCY OF LEADERSHIP AND THOSE QUALITIES THAT WE MIGHT SEEK IN ANY INDIVIDUAL FILLING THE POSITION OF ATTORNEY GENERAL OF THE UNITED STATES.

MR. MEESE HAS SET HIGH EXAMPLES FOR SUBORDINATES TO FOLLOW AND HAS DISPLAYED A SENSE OF IMAGINATION AND INTELLIGENT PLANNING. HIS CAPABILITIES AND KEEN MANAGEMENT SENSE ARE LOGICAL APPROACHES TO PROBLEM SOLVING. TO DATE, HE HAS MADE MANY REMARKABLE AND LASTING ACHIEVEMENTS WHICH SHOULD NOT GO UNNOTICED FOR HE IS NOT A SINISTER FIGURE BUT A DEDICATED PUBLIC EMPLOYEE WHO HAS A SUPERB REPUTATION FOR ACCOUNTABILITY. HE REPRESENTS STABILITY AS OPPOSED TO THE PRESENT FAD OF PERMISSIVENESS AND IS A FORMIDABLE INDIVIDUAL FOR

MAINTAINING LAW AND ORDER, EFFICIENCY AND EXCELLENCE IN LAW ENFORCEMENT AND THE CRIMINAL JUSTICE FIELD. WE IN THE CRIMINAL JUSTICE FAMILY REPRESENT MORE THAN JUST THE PEOPLE'S PROTECTORS, WE STAND AND REPRESENT THE LOGICAL EXTENSION OF A FREE AND DEMOCRATIC SOCIETY.

IN DECIDING TO APPEAR BEFORE YOU TODAY, I DID ENGAGE IN A SHORT ANALYSIS OF PRESENTING MY VIEWS IN SUPPORT OF MR. EDWIN MEESE AND I HAD TO WONDER IF I DISPLAY THE INITIATIVE AND ENTHUSIASM NECESSARY TO WIN HIM THIS WELL-EARNED CONFIRMATION. I ALSO HAD TO WONDER - HOW LONG SHOULD I SPEAK - TOO SHORT AND RUN THE RISK OF SAYING NOTHING OR TOO LONG AND STILL BE GUILTY OF SAYING NOTHING? CAN HE BE CONFIRMED BECAUSE HE IS POPULAR? AND HOW LONG DOES HE REMAIN POPULAR WHEN HE MUST MAKE NUMEROUS DECISIONS WHICH MIGHT BE UNPOPULAR? HOW IMPORTANT IS HIS PREVIOUS EXPERIENCE? MUST ONE HAVE ALREADY EXPERIENCED SOMETHING TO BE GOOD AT IT? FOR BY COMPARISON, SOME OF THE BEST BABY DOCTORS HAVE NEVER HAD A BABY. I BELIEVE THAT THIS CANDIDATE FOR THE POSITION OF ATTORNEY GENERAL DOES TRULY POSSESS THOSE IMPRESSIVE QUALITIES AND ATTRIBUTES WHICH YOU SHOULD BE LOOKING FOR IN A PROSPECTIVE OFFICE HOLDER INCLUDING HONESTY, INTEGRITY, EXPERIENCE, SINCERITY, DIPLOMACY AND COURAGE AS WELL AS ALL THOSE ADDITIONAL INGREDIENTS WHICH ARE NECESSARY FOR MR. MEESE TO BE A PRODUCTIVE ATTORNEY GENERAL. SOME OF THE ISSUES LIKE THE WEATHER GENERALLY CHANGE AND IT SEEMS FLEXIBILITY IS AN IMPORTANT TRAIT, ONE WHICH IS THE HALLMARK OF HIS DAILY DECISIONS. YES, CRITICAL ISSUES MUST BE ADDRESSED AND BROUGHT TO THE TEST OF SCRUTINY BUT EVIDENCE AND TESTIMONY NEED TO BE KEPT IN PERSPECTIVE. IT IS DISCOURAGING SOMETIMES TO SEE HOW LONG SOME PROBLEMS WILL BE TOLERATED BEFORE THEY ARE VIGOROUSLY AND AGGRESSIVELY BROUGHT TO THE TEST OF CORRECTION. IN THAT SAME VEIN, CRIME HAS BEEN INCREASING FOR MANY YEARS. AS ATTORNEY GENERAL OF THE UNITED STATES, MR. MEESE WILL BE CALLED UPON AS THE SINGLE MOST IMPORTANT SEGMENT OF THE CRIMINAL JUSTICE COMMUNITY TO DEAL WITH ALL THE CONSEQUENCES AND CAUSATIONS OF CRIME AS WELL AS THE OTHER AWESOME THINGS THAT ARE NOT RIGHT IN OUR SOCIETY. THERE EXISTS A NEW ALLIANCE IN OUR COUNTRY BETWEEN POLICE AND CITIZENS THAT HAVE JOINED TO WAGE BATTLE AGAINST THE RISE IN CRIME

IN THE UNITED STATES AND WITHOUT THE HELP OF THE CITIZENS AND WITHOUT THE SUPPORT OF THE COMMUNITIES, THERE JUST ARE NOT ENOUGH RESOURCES TO TURN THE TIDE. I TRULY BELIEVE THEREFORE THAT MR. MEESE AS ATTORNEY GENERAL OF THE UNITED STATES CAN BE THE SPARK THAT IS NECESSARY TO RALLY OUR FORCES AND MOVE FORWARD WITH INGENUITY AND POWERFUL NEW APPROACHES TO SOLVING MANY OF THOSE EXISTING PROBLEMS.

IN CLOSING, I WOULD LIKE TO LEAVE YOU WITH THIS SIMPLE THOUGHT. I RAN ACROSS A SMALL ANECDOTE CONTAINED IN NAVAL HISTORY THAT MIGHT BE SOMEWHAT APPLICABLE TO THE DILEMNA WE ARE PRESENTLY FACING. THE INSTANCE IS SUPPOSED TO BE TRUE AND FACTUAL, THE PRINCIPAL PLAYERS ARE UNKNOWN BY NAME. AS THE STORY GOES, IT SEEMS THERE WAS A NAVAL OFFICER ABOARD THE BRIDGE OF A U. S. NAVY SHIP. THE SUN HAD SET AND DARKNESS LAY HEAVY ACROSS THE SEA. THE NAVAL OFFICER VISUALLY SPOTTED A LIGHT ON THE HORIZON. AS HE CONTINUED TO FOCUS ON THE LIGHT, HE NOTICED IT CAME CLOSER AND CLOSER. IT BECAME INCREASINGLY APPARENT THAT THE LIGHT WAS ON A COLLISION COURSE WITH HIS VESSEL. REALIZING THE CRISIS HE WAS FACING, THE OFFICER RADIOED THE SHIP INFORMING IT THEY WERE ON A COLLISION COURSE AND DIRECTING THEM TO CHANGE THEIR COURSE FIFTEEN DEGREES TO STARBOARD. THE UNIDENTIFIED SHIP RADIOED BACK TO THE NAVAL OFFICER TO ALTER HIS COURSE BY FIFTEEN DEGREES TO PORT. THE INDIGNANT NAVAL OFFICER, OFFENDED BY THE RESPONSE, READILY INFORMED THE ONCOMING SHIP THAT HE WAS A NAVY ADMIRAL AND HEREBY ORDERED THEM TO COMPLY WITH HIS REQUEST. THE RESPONSE WAS, "I AM A NAVAL SEAMAN, YOU CHANGE YOUR COURSE. THIS IS AN ORDER." FLABBERGASTED BY THE RESPONSE, THE ADMIRAL THEN RESPONDED, "THIS IS A UNITED STATES NAVAL BATTLESHIP, I SUGGEST THAT YOU IMMEDIATELY ALTER YOUR COURSE." THE RESPONSE FROM THE PHANTOM SHIP WAS, "THIS IS A LIGHT HOUSE, I RESPECTIVELY REQUEST THAT YOU ALTER YOURS." THE MESSAGE CONTAINED IN THIS SIMPLY INFORMS US THAT IF WE ARE TO SOLVE OUR AWESOME PROBLEMS WE HAVE BEFORE US, THEN WE MUST PLOT A COURSE TRUE AND ACCURATE SO THE OBSTACLES IN OUR ROADWAY CAN BE

REMOVED AND DEALT WITH. I AM CONFIDENT THAT AS WE FOCUS MORE AND MORE ATTENTION, COUNTLESS CRIMINAL JUSTICE AGENCIES AND CITIZENS WILL RESPOND TO THE CALL TO STATIONS AND THAT IN THE FINAL ANALYSIS WE WILL EMERGE VICTORIOUS. I AM AT THE TWILIGHT OF MY CAREER BUT I WOULD FEEL VERY COMFORTABLE SERVING IN THE ENGINE ROOM OF THAT SHIP OF STATE KNOWING THAT MR. EDWIN MEESE WAS AT THE HELM BEGINNING HIS STEWARDSHIP AS THE ATTORNEY GENERAL OF THE UNITED STATES.

I WHOLEHEARTEDLY APPEAL TO YOU TO GIVE HIM FAVORABLE CONSIDERATION AS YOU DELIBERATE IN THESE CONFIRMATION HEARINGS AND REALIZE THAT YOUR TASK IS DIFFICULT. MR. EDWIN MEESE IS, IN MY JUDGEMENT, AN HONORABLE INDIVIDUAL WHO JUSTIFIABLY DESERVES BEING CONFIRMED AS THE ATTORNEY GENERAL OF THE UNITED STATES.

THANK YOU FOR ALLOWING ME TO HAVE THIS BRIEF OPPORTUNITY TO ADDRESS YOU AND GOD SPEED.

International Association of Chiefs of Police Inc
Thirteen Firstfield Road
P.O. Box 6010
Gaithersburg Maryland 20878
Phone (301) 948-0922
Cable Address: IACPOLICE

James A. Sterling
Acting Executive Director

January 24, 1985

William Brierley
Past General Chairman
Division of State Associations
Newark Police Department
294 East Main Street
Newark, Delaware 19711

Dear Chief Brierley:

It is my understanding you will be presenting input to the Congress on behalf of the Division of State Associations of Chiefs of Police (SACOP) regarding the confirmation of Attorney General Designate Edwin Meese. I would like to offer both observations and support for this individual because there are important contributions Mr. Meese has made to the welfare of American public safety.

Because the United States as opposed to other industrial nations decentralizes police authority into thousands of local police departments, law enforcement executives find it effective to combine their input to state legislatures, congressional delegations or other important groups through state associations. At the national level, SACOP represents the collective voice of this commonwealth of law enforcement leadership. Since joining the Reagan Administration, Edwin Meese has played a key role in assisting local law enforcement officials as Counselor to the President. He has repeatedly voiced the concerns of local police administrators and has worked to address the problems confronting line officer personnel in the cities and counties of America. Not only has he been a thoughtful and articulate advocate of enhancement of local law enforcement, but he has helped to build a climate of cooperation that has had a positive impact on the complex jurisdictional relationships between federal, state, and local agencies.

As a police executive who has witnessed four different administrations, I can confidently say that Mr. Meese personifies the best that we have enjoyed of any ranking cabinet level official, not simply for what he has done in our behalf, but how he has given of himself personally through direct involvement. Mr. Meese in cooperation with the Director of the National Institute of Justice are leading the way in helping America address a monumental public safety problem. Most Americans have no idea that private sector security has now grown to twice the size of public law enforcement and expends more dollars by a factor of nearly 1/3 over appropriations for federal, state, county, and local law enforcement agencies combined. Mr. Meese is bringing leadership to improving ill-defined public/private sector relationships. He and his colleagues have not only produced good research to focus on these issues, but Mr. Meese actively participated in a special law enforcement summit meeting to help overcome traditional inertia that too often slows progress in areas needing mutual trust.

There are many other situations where his knowledge of the law, his enthusiasm for the youth of our country, and his personal experiences in dealing with criminal justice practitioners have made Edwin Meese a highly respected and important part of the law enforcement family. I feel comfortable in conveying to you the current enthusiasm members of our Division hold for the confirmation of Attorney General Desigate Meese. The outpouring of respect and affection shown him in Seattle last summer was genuine. Mr. Meese is perceived as having gone the extra mile as an important leader at the federal level; he is seen as being accessible; and finally he is recognized as a human being, willing to give of himself in behalf of America's police practitioners. I urge you to present this communique as a part of the record in behalf of this candidate and to also convey to him our wholehearted endorsement at this time.

Respectfully,

Michael G. Shanahan
Immediate Past General Chairman
SACOP

Local address:

University of Washington
Police Department
1117 N.E. Boat Street HE-10
Seattle, Washington 98105

cc: James W. Sterling
Acting Executive Director
IACP

International Association of Chiefs of Police, Inc.
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Associations of
Chiefs of Police
General Chairman
Thomas H. Simpson
River Vale, NJ

Past President and
Parliamentarian
Francis B. Looney
Farmingdale, NY

Norman Darwick
Executive Director

January 21, 1985

Chief William Brierley
Newark Police Department,
294 East Main Street,
Newark, Delaware

Dear Chief Brierley:

In response to our conversation, in which you informed me of your upcoming testimony in the confirmation hearings for the Honorable Edwin Meese to be appointed Attorney General of the United States. I would request that you read into the record the feelings of the Division of State Associations of Chiefs of Police.

We, are in complete accord with the appointment of Mr. Meese to this high office. Mr. Meese possesses all of the qualities and all of the qualifications needed to fulfill this position.

Mr. Edwir Meese has the full support of Law Enforcement Officials across the country.

It is with both honor and pride, thrt I, as General Chairman, of the Division of State Associations of Chiefs of Police, speaking for our thousands of member Chiefs, heartily endorse the appointment of the Honorable Edwin Meese, to the position of Attorney General of the United States of America.

Sincerely,

Thomas H. Simpson

Thomas H. Simpson, Chief
General Chairman of the Division of
State Associations of Chiefs of Police

THE
UNIVERSITY
OF UTAH

DEPARTMENT OF
PUBLIC SAFETY

BUILDING 301
SALT LAKE CITY, UTAH 84112
801 581 7944

January 21, 1985

Chief Bill Brierley
Newark Police Department
294 East Main Street
Newark, Delaware 19711

Dear Bill:

I appreciated the conversation with you concerning the confirmation hearings of Edwin Meese for the position of Attorney General. Having been a past General Chairman of the Fifty State Chiefs of Police Association and also having had the pleasure of serving on the Board of Officers and Executive Committee of the International Association of Chiefs of Police, I have had the opportunity to interact and observe Edwin Meese.

I personally believe he would be an outstanding Attorney General and would truly represent the direction and needs of law enforcement throughout the United States of America. Mr. Meese has shown us, in law enforcement, numerous times his willingness to listen and take into consideration our needs. This willingness to interact is very uncommon in a person in his position.

I personally, wholeheartedly, endorse Edwin Meese and would encourage others involved in the confirmation hearings to support this outstanding individual. I do appreciate the opportunity of expressing my beliefs and opinions.

Respectfully,

Wayne D. Shepherd

Wayne D. Shepherd, Chief
University of Utah Police

Past General Chairman
State Associations of Chiefs of Police

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Mr. BALDWIN. I have the testimony of Mr. Robert R. Fuesel, national president of the Federal Criminal Investigators Association and I would ask that his testimony be made a part of the record. And Mr. Ordway P. Burden, president of the National Law Enforcement Assistance Foundation. He, too, was here for 2 days and could not stay any longer. But I would ask that his statement be made part of the record.

The CHAIRMAN. How about Mr. Carrington?

Mr. BALDWIN. He sent his in to you yesterday.

The CHAIRMAN. All right. Without objection the statements of Mr. Fuesel, Mr. Burden, and Mr. Carrington will be made part of the record.

[The following statements were received for the record:]

TESTIMONY OF ROBERT R. FUESEL, NATIONAL PRESIDENT,
FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION,
AS GIVEN BY MICKEY VEICH, CONGRESSIONAL AFFAIRS OFFICER,
FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION

THANK YOU CHAIRMAN THURMOND AND MEMBERS OF THE COMMITTEE; MY NAME IS MICKEY VEICH. I AM THE CONGRESSIONAL AFFAIRS OFFICER FOR THE FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION. I AM APPEARING HERE ON BEHALF OF ROBERT R. FUESEL, OUR NATIONAL PRESIDENT.

THE FCIA IS MADE UP OF AGENTS REPRESENTING MORE THAN 50 FEDERAL ENFORCEMENT AGENCIES THROUGHOUT NOT ONLY THE UNITED STATES, BUT ALSO THE REST OF THE FREE WORLD. THE PRIMARY GOAL OF THE ORGANIZATION IS SIMPLY TO ENCOURAGE A RECOGNITION THAT CRIMINAL INVESTIGATION IS A TRUE AND HONORABLE PROFESSION. IT IS WITH THAT GOAL IN MIND THAT THE EXECUTIVE BOARD, ACTING ON BEHALF OF THE GENERAL MEMBERSHIP OF THE FCIA, WISHES TO PLACE ON THE RECORD ITS HEARTY AND UNQUALIFIED ENDORSEMENT OF COUNSELOR FOR THE PRESIDENT, EDWIN MEESE, III, FOR THE OFFICE OF ATTORNEY GENERAL OF THE UNITED STATES.

THE FCIA CONSISTS FOR THE MOST PART OF CRIMINAL INVESTIGATORS WHO ARE WISE AND CONDITIONED IN THE WAYS OF THE STREET, WE SINCERELY FEEL THAT OUR ORGANIZATION'S GOALS FOR LAW ENFORCEMENT WILL BE ADVANCED SUBSTANTIALLY BY THE APPOINTMENT OF COUNSELOR MEESE AS ATTORNEY GENERAL.

HIS DEDICATION TO STRENUOUS AND EQUITABLE ENFORCEMENT OF THE LAWS IS EVIDENCED BY HIS EXEMPLARY RECORD AS A DEPUTY DISTRICT ATTORNEY IN ALAMEDA COUNTY, CALIFORNIA.

HIS CLOSE ASSOCIATION WITH THE PRESIDENT OF THE UNITED STATES IS IN KEEPING WITH THE PRESIDENT'S STATED GOALS FOR LAW ENFORCEMENT.

HIS CONTACTS WITH LAW ENFORCEMENT OFFICERS NATIONSIDE BRINGS RESPECT FOR HIM THROUGHOUT THE LAW ENFORCEMENT COMMUNITY.

HIS COOPERATION WITH LAW ENFORCEMENT OFFICIALS PROMISES THAT HIS CONFIRMATION WILL ENHANCE THE LAW ENFORCEMENT LIAISON EFFORT.

THIS ENDORSEMENT IS BASED UPON THE COLLECTIVE EXPERIENCE OF THOSE CRIMINAL INVESTIGATORS WHO ARE CHARGED WITH THE RESPONSIBILITY FOR ENFORCING OUR NATION'S LAWS. YOU HERE TODAY ALL KNOW THE TYPE OF DEDICATED CRIMINAL INVESTIGATORS OF WHOM I SPEAK. WE IN THE PROFESSION MOST COMMONLY REFER TO THEM, WITH A CERTAIN DEGREE OF REVERENCE, AS THOSE IN "THE FIELD." THEY ARE THE MEN AND WOMEN WHO SPEND THEIR ENTIRE WORKING DAYS AND NIGHTS IN THE STREETS OF OUR GREAT COUNTRY; THEY ARE THE FRONT LINE TROOPS IN THE DAY-TO-DAY BATTLE ON BEHALF OF THE PEOPLE OF THIS COUNTRY AGAINST THOSE WHO ARE BENT ON CRIMINAL ACTIVITIES. WE KNOW THAT ALL OF YOU HERE TODAY SUPPORT THE DAILY ENFORCEMENT EFFORTS OF THESE AGENTS. LEST THERE BE ANY DOUBT, WE ARE BEFORE YOU NOW TO STATE UNEQUIVOCALLY THAT THOSE FIELD TROOPS SUPPORT FULLY THE NOMINATION OF COUNSELOR MEESE.

WE RESPECTFULLY SUGGEST THAT MR. MEESE WILL BRING TO THE OFFICE OF THE ATTORNEY GENERAL NOT MERELY A WEALTH OF LAW ENFORCEMENT EXPERIENCE, BUT ALSO A SENSE OF JUSTICE COUPLED WITH AN UNQUENCHABLE DESIRE FOR FIGHTING CRIME. FURTHERMORE, WE FEEL THAT COUNSELOR MEESE, THOUGH AN INDIVIDUAL WHO WILL BE TOUGH ON CRIME AND CRIMINALS, IS ALSO A SENSITIVE MAN WHOSE COMPASSION FOR THE VICTIMS OF CRIMINAL ACTIVITY IS WELL KNOW. HE IS THE CO-FOUNDER OF THE CRIME VICTIMS ADVOCACY INSTITUTE.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, WE DO NOT MAKE THIS ENDORSEMENT LIGHTLY; OUR COLLECTIVE CONSCIENCE WILL NOT PERMIT A LIGHT DECISION IN THIS REGARD. WE ARE MAKING THIS ENDORSEMENT BECAUSE WE SINCERELY BELIEVE, BASED ON OUR EXPERIENCE AND MR. MEESE'S RECORD, THAT HIS CONFIRMATION FOR THE OFFICE OF ATTORNEY GENERAL OF THE UNITED STATES WOULD BE OF BENEFIT NOT ONLY TO THE FEDERAL ENFORCEMENT EFFORT, BUT TO THE ENTIRE LAW ENFORCEMENT COMMUNITY OF THE UNITED STATES. THANK YOU. I WILL NOW ATTEMPT TO ANSWER ANY QUESTIONS THE COMMITTEE MEMBERS MAY HAVE.

TESTIMONY OF

MR. ORDWAY P. BURDEN, PRESIDENT
LAW ENFORCEMENT ASSISTANCE FOUNDATION, AND
CHAIRMAN, NATIONAL LAW ENFORCEMENT COUNCIL

Thank you Mr. Chairman and members of the committee for allowing us the opportunity to testify on behalf of the nomination of the Honorable Edwin Meese, III, to be Attorney General of the United States.

My name is Ordway P. Burden. I am here today speaking as President of the Law Enforcement Assistance Foundation and chairman of the National Law Enforcement Council.

I speak as a private citizen who has spent much of my adult life assisting the men and women members of the law enforcement profession protecting us on the front lines in the battle against crime. The Law Enforcement Assistance Foundation makes grants for projects designed to educate our public about crime prevention and to foster cooperation among law enforcement agencies and associations. The National Law Enforcement Council is a coalition of 12 national associations representing over 300,000 law enforcement officers. These gentlemen sitting with me today on this panel are representatives of the Council and will speak individually for their organizations and for our unanimous support for the President's nomination of Ed Meese for Attorney General.

Since the release of the independent counsel's report last year, clearing Mr. Meese of any wrong doing, we have reinforced our strong support for the nominee. Exhaustive investigations into the Meese matter was conducted by Jacob Stein and his five deputy counsels. Several hundred witnesses were interviewed, including an additional 45 questioned by the grand jury. Mr. Meese came out with a clean slate.

Edwin Meese will, I believe, if confirmed by the Senate, become a distinguished Attorney General. As Counsellor to the President, and earlier as his top aide when President Reagan was Governor of California, Mr. Meese has demonstrated efficiency, managerial skill and legal acumen that will serve him well as head of the Department of Justice.

Mr. Meese was a vigorous and effective prosecutor in the Alameda County District Attorney's office in California during a trying time for law enforcement. In dealing with the civil disturbances and riots of the Vietnam War era in a firm but even-handed manner, he displayed the qualities that are essential in the office of the Attorney General of the United States.

I cannot speak for the entire field of law enforcement, but I think there is not much doubt that the overwhelming majority of police officers, prosecutors and criminal court officials will welcome the appointment of Mr. Meese. His extensive knowledge of the criminal justic system and his experience as a lawyer, law professor, and law enforcement officer makes him well qualified to assume the most important law enforcement position in the nation.

For these reasons, I am pleased to support the nomination of Edwin Meese III for Attorney General of the United States.

Thank you.

STATEMENT OF FRANK CARRINGTON, EXECUTIVE DIRECTOR, VICTIMS ASSISTANCE LEGAL ORGANIZATION, (VALOR), BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, IN THE MATTER OF THE CONFIRMATION OF THE HONORABLE EDWIN L. MEESE, III, AS ATTORNEY GENERAL OF THE UNITED STATES.

Mr. Chairman: My name is Frank Carrington; I reside at 4530 Oceanfront, Virginia Beach, Virginia 23451. I am the Executive Director of the Victims Assistance Legal Organization (VALOR), Virginia Beach, Virginia. VALOR is a national, not-for-profit public interest law firm which serves as a clearinghouse of information for attorneys who represent victims of crime.

Briefly, by way of personal backround, I am an attorney (Ll. B., University of Michigan, 1960; Ll. M., Northwestern University, 1970). I am a member of the Bar of the Supreme Court of the United States, and of the States of Virginia, Illinois, Ohio and Colorado (the latter three inactive, non-resident status). With regard to criminal justice activity, I have served as Assistant Director, Policy Coordination, Criminal Justice, Reagan/Bush Transition Team; Member, Attorney General's Task Force on Violent Crime (1981); Member, President Reagan's Task Force on Victims of Crime (1982); and I am currently a Member of the Advisory Board of the National Institute of Justice, United States Department of Justice. I am also the Chairman of the Victims Committee of the American Bar Association.

Mr. Chairman, I mention these activities only to put my testimony in support of Mr. Meese's confirmation in perspective. I have known Ed Meese personally and professionally for about fifteen years. It would be redundant for me to reiterate all of the good things that you have heard about the Attorney General Designate: his brilliant legal acumen; his dedication, based on years of personal experience, to the improvement of the criminal justice system; his commitment to restoring a balance to the same system whereby the average citizen can go about his or her business in relative freedom from criminal harm. I will confine my remarks to one facet of Ed Meese's career in criminal justice that has received far too little attention. This is the fact that Mr. Meese is the preeminent advocate, in his own quiet way, of the rights of victims of crime in this country today.

Ed Meese has never sought personal publicity; he has become a "household word" almost in spite of his wishes. Therefore his detractors are, presumably in good faith, free to hurl their brickbats at him, which Mr. Meese accepts with the same aplomb that he accepts everything else. If his confirmation hearings serve no other purpose, they present an opportunity for his admirers, those of us who have worked with and for him, to present his side of the story for the record.

My characterization of Ed Meese as "the preeminent victims' advocate" in the country is not overstatement. He has received far too little credit for his accomplishments and activities in this area. Mr. Meese as a public official, Counsellor to the President, was the guiding force behind such initiatives as the President's proclamations of Victims' Rights Week in 1982, 1983 and presumably, 1984. (Such proclamations were, in the past, adamantly refused by the prior Administration). Mr. Meese's "brain child" was the President's Task Force on Victims of Crime, chaired by the Honorable Lois Haight Herrington, the Report of which Task Force will be the "Bible" of victim advocates for years to come.

Through Mr. Meese's good offices, Mrs. Herrington has now been appointed Assistant Attorney General of the United States, charged specifically with the implementation of the Task Force's recommendations. Additionally, Mr. Meese was instrumental in appointing the Honorable D. Lowell Jensen, former District Attorney of Alameda County, California (and a Democrat), as Assistant Attorney General of the United States, Criminal Division, now Associate Attorney General of the United States. A fact that has escaped public attention is that Mr. Jensen, while District Attorney of Alameda County, pioneered the first, eminently successful, victim/witness program in the country.

Thus, Mr. Meese's record, as a public figure, in the area of crime victims' rights is unassailable. One could, however, speculate that Mr. Meese's activity on behalf of crime victims evolved only when he became Counsellor to the President and recognized it as a "hot" political issue.

Nothing could be farther from the truth; and this is the principal aspect of my testimony. Ed Meese was committed to doing something constructive about the plight of crime victims long before he ascended to high public office. To give credence to this I submit the following:

Item: On a personal note, Mr. Meese contacted me in May of 1980, six months before the Presidential election, and advised me that when (not if) Ronald Reagan was elected to the Presidency, the rights of crime victims would be given the highest priority. As a result of this, then-candidate Reagan established an Advisory Task Force on the rights of crime victims. I had the honor of chairing this Task Force, which, incidentally, was bi-partisan, Republicans and Democrats alike served on the Task Force.

Item: In 1979, Mr. Meese in his then-capacity as Director of the Institute for Criminal Justice Policy and Management at San Diego State Law School, convened the first Seminar on third party lawsuits by victims against custodial officials for negligent release of prisoners.

Item: Mr. Meese was founding director of the Victims Assistance Legal Organization (VALOR) and served on VALOR's Board of Directors until he became Counsellor to the President.

Mr. Chairman, I raise these points to demonstrate that Ed Meese is no "Johnny-Come-Lately" to the victims' movement. Indeed, his commitment to improving the criminal justice system, and in particular to improving the lot of crime victims was manifested long before he came into his high national office.

In summary, Mr. Chairman, Mr. Meese is not only qualified for the position of Attorney General of the United States, but it may well be that he is the single most qualified person in the country today to serve in this important office. His long-standing commitment to the rights of victims of crime is but one measure of his qualities that should mandate confirmation by the Senate of the United States.

With thanks for such consideration as you may give to this Statement, I am,

Respectfully,

Frank Carrington
Attorney and Counsellor at Law,
Executive Director, Victims
Assistance Legal Organization,
Virginia Beach, Virginia

Mr. **Baldwin**. Then I would ask that my statement be made part of the record.

The **Chairman**. Without objection it will be made part of the record.

[The following statement was received for the record:]

TESTIMONY OF
DONALD BALDWIN, EXECUTIVE DIRECTOR
NATIONAL LAW ENFORCEMENT COUNCIL

Mr. Chairman and members of the Senate Judiciary Committee we thank you for the opportunity to comment, again, on the qualifications of The Honorable Edwin Meese, III, to be Attorney General of the United States. My name is Donald Baldwin. I appear before you today in my capacity as Executive Director of the National Law Enforcement Council.

As you recall, we came before you last March to urge Mr. Meese's confirmation on the basis of his strong qualifications for the top law enforcement job in our country. We feel no less today, and even stronger, in our support for Mr. Meese in view of the findings by the independent counsel that he is cleared of all allegations of criminal improprieties.

Independent counsel Jacob Stein and his five deputy counsels interviewed 200 witnesses. A grand jury questioned 45 witnesses. Both the grand jury and the counsels looked into the matter and read libraries full of documents. They came down with the same conclusion of those of us who had supported him last March. Mr. Meese is well qualified for the job, and there is nothing in the manner in which he has carried out his duties as Counsellor to the President that does any more than underscore our support of the nominee.

The National Law Enforcement Counsel, reaching more than 300,000 law enforcement officers through our membership of twelve national law enforcement organizations, felt then as we feel now that nitpicking a candidate for public office serves to undermind the trust the people must have in public officials. Elected, or appointed public officials, are called upon to extend themselves to the extremeties of their abilities for the protection of the public. Such is the case with Mr. Meese. He has proven himself an outstanding public servant. Among the dedicated public servants in the law enforcement/criminal justice community thoughout this nation you will be hard pressed to find responsable officials who do not have the highest regard for this nominee. As our witnesses will testify, he is known far and wide in the law enforcement community as "Mr. Integrity." Note that I am emphasizing this with a capital "I".

Mr. Burden, as Chairman of the National Law Enforcement Council, as well as President of the Law Enforcement Assistance Foundation, has pointed out to you that the testimony you are receiving from this panel is made on behalf of our membership: Association of Federal Investigators, Federal Criminal Investigators Association, FBI National Academy Associates, Fraternal Order of Police, International Union of Police Associations, Law Enforcement Assistance Foundation, National Association of Police Organizations, National District Attorneys Association, National Sheriffs' Association, National Troopers Coalition, Society of Former Special Agents of the FBI, and the Victims Assistance Legal Organization.

We feel that Mr. Meese's experience as a prominent member of the legal profession for the past twenty five years, and including practical experience as law enforcement officer, more than adequately prepares him for the responsibilities he will undertake as our highest law enforecement officer. As deputy district attorney for Alameda County, California, and trial lawyer for eight years, he knows the problems of law enforecement first hand. He also served as legal advisor to the County grand jury, and represented both the state district attorneys, and Peace Officer's Association before the California legislature.

Mr. Meese was vice chariman of the California Organized Crime Control Commission, and a member of the American Bar Association's Criminal Law Section "Committe on the Future." He has been a part-time law professor at the UCLA Law School, and has lectured widely on such legal topics as "The Responsibility of the Legal Profession to Provide Services to the Poor", and "Reform of the Justice System." In 1977 Mr. Meese was named Professor of Law at the University of San Diego and served as Director of the Law School's Center for Criminal Justice Policy and Management.

No person has come before this committee as a nominee for Attorney General of the United States with better qualifications from both the law enforecement and legal professions. This committee should waste no time in confirming Ed Meese as the next Attorney General. We have delayed this confirmation too long. It is time to put politics aside and do what is right by confirming him at the earliest possible date.

Thank you very much for this opportunity to testify on behalf of the President's nominee for Attorney General.

The CHAIRMAN. I would also make part of the record, without objection, the statement of Mr. Robert E. Van Etten, national president of the Federal Law Enforcement Officers Association.

[The following statement was received for the record:]

TESTIMONY BY
ROBERT E. VAN ETTEN, NATIONAL PRESIDENT
OF THE
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

MR. CHAIRMAN AND SENATORS:

I AM ROBERT E. VAN ETTEN, NATIONAL PRESIDENT OF THE FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION. IT IS AN HONOR TO BE ABLE TO ADDRESS THIS COMMITTEE, TODAY, IN SUPPORT OF EDWIN MEESE'S CONFIRMATION AS ATTORNEY GENERAL OF THE UNITED STATES.

THE FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION IS THE LARGEST ASSOCIATION IN THE NATION EXCLUSIVELY REPRESENTING FEDERAL LAW ENFORCEMENT OFFICERS AND CRIMINAL INVESTIGATORS. WE DRAW OUR MEMBERSHIP FROM 26 FEDERAL AGENCIES AND OUR MEN AND WOMEN CONSTITUTE MORE THAN 25 PERCENT OF ALL SWORN ENFORCEMENT PERSONNEL IN FEDERAL SERVICE. IT IS ON THEIR BEHALF THAT I WISH TO OFFER THIS ENDORSEMENT OF MR. MEESE.

FIRST, WE HAVE NO DOUBT THAT THE BEST INTERESTS OF THE UNITED STATES AND ITS CRIMINAL JUSTICE SYSTEM CAN BE SERVED BY MR. MEESE'S CONFIRMATION. WHEN PRESIDENT REAGAN WON A SECOND TERM CARRYING 49 OF OUR 50 STATES, THE AMERICAN PEOPLE SENT A CLEAR SIGNAL THAT THEY WANTED HIM TO STAY THE COURSE AND RUN THE NATION WITH HIS CHOSEN TEAM. AS THE PRESIDENT'S CHOICE MR. MEESE SHOULD BE CONFIRMED AS A MEMBER OF THAT TEAM.

SECOND, THE AMERICAN PEOPLE ARE SICK AND TIRED OF CRIME. THEY WANT THEIR CRIMINAL JUSTICE SYSTEM HEADED BY A KNOWLEGEABLE LAW ENFORCEMENT OFFICIAL WHOSE TRADITIONAL VALUES HELP HIM TO ENFORCE LAWS, CURTAIL CRIME, RAPIDLY AND FAIRLY PROSECUTE CRIMINALS AND SWIFTLY INCARCERATE OR DIVERT THOSE CONVICTED. THEY ALSO WANT THIS DONE WITH CAREFUL REGARD FOR FAIRNESS AND DUE PROCESS. IN OUR OPINION NO OTHER NOMINEE IN RECENT HISTORY MEETS THESE REQUIREMENTS BETTER THAN EDWIN MEESE.

MR. MEESE HAS THE "GRASS ROOTS" SUPPORT OF LAW ENFORCEMENT OFFICERS , POLICE AND THEIR PROFESSIONAL ASSOCIATIONS. MR. MEESE HAS PROVEN THAT HE CAN BALANCE THE COMPETING NEEDS OF FEDERAL, STATE, COUNTY AND LOCAL LAW ENFORCEMENT. HE POSSESSES HANDS-ON EXPERIENCE IN MANAGING THE PROBLEMS AND THE OPPORTUNITIES OF STATE LAW ENFORCEMENT. AND, HIS EXPERIENCE, IN CALIFORNIA, HAS MADE HIM AWARE OF THE NEEDS OF BOTH URBAN AND RURAL CRIMINAL JUSTICE.

UNDER MR. MEESE'S GUIDANCE AND WITH HIS PERSONAL CONTRIBUTION THE OMNIBUS CRIME BILL WAS PREPARED AND SHEPHERDED THROUGH TO PASSAGE. THIS ACHIEVEMENT PUT IN PLACE DESPERATELY NEEDED REFORMS IN OUR CRIMINAL JUSTICE SYSTEM.

MR. MEESE'S ASSISTANCE AND BLESSING HELPED GAIN A $50,000 DEATH BENEFIT FOR THE WIDOWS AND ORPHANS OF FEDERAL LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS KILLED IN THE LINE OF DUTY.

BECAUSE OF HIS EFFORTS AMERICAN FAMILIES CAN KNOW WITH CERTAINTY THAT INTERNATIONAL PEDDLER OF CHILD SMUT WILL BE PROSECUTED AND THEIR FILTH SEIZED. THE WAR ON "KIDDY PORN" IS ON AND MR. MEESE HAS BEEN INSTRUMENTAL IN SEEING THAT IT IS ON WITH A VENGEANCE.

FINALLY, OPERATION EXODUS HAS ENHANCED THE NATIONAL SECURITY BY CLAMPING DOWN ON THE ILLEGAL EXPORT OF HIGH TECHNOLOGY. MR. MEESE PLAYED A CENTRAL ROLE IN THIS EFFORT TO PREVENT CRITICAL TECHNOLOGY FROM FLOWING TO COMMUNIST AND CERTAIN THIRD WORLD COUNTRIES.

SPEAKING FROM PERSONAL EXPERIENCE, I HAVE FOUND MR. MEESE EXTRAORDINARILY OPEN TO THE VOICES OF WORKING LAW ENFORCEMENT OFFICERS AND THEIR PROFESSIONAL ORGANIZATIONS. IN MY 19 YEARS IN FEDERAL LAW ENFORCEMENT, AND MY 15 YEARS AS AN OFFICER IN ASSOCIATIONS LIKE FLEOA, I KNOW OF NO OTHER TOP FIGURE THAT

HAS BEEN MORE IMMEDIATELY ACCESSIBLE THAN EDWIN MEESE. I BELIEVE THIS VIRTUE, MORE THAN ANY OTHER FACTOR, WILL PERMIT HIM TO IMPROVE THE PERFORMANCE AND JOB SATISFACTION IN OUR LAW ENFORCEMENT BUREAUCRACIES.

IN MY OWN MEETING WITH MR. MEESE , MARCH 28, 1983, I FOUND HIS CANDOR REFRESHING AND HIS KNOWLEGE VERY BROAD. FLEOA PREPARED A SURVEY OF TOP PRIORITY ITEMS THAT WE PRESENTED TO MR. MEESE AT THAT TIME. HE COMMENTED ON MANY AND RESPONDED DIRECTLY TO OUR OTHER QUESTIONS WITHIN A WEEK. SINCE THAT TIME A MEMBER OF HIS STAFF HAS ALWAYS BEEN AVAILABLE TO US IF WE HAD QUESTIONS OR WISHED TO RAISE AN ISSUE FOR HIS ATTENTION.

EARLY IN DECEMBER, 1984, WHEN OUR MEMBERSHIP'S CONCERN OVER FEDERAL LAW ENFORCEMENT RETIREMENTS WAS VERY KEEN, WE REQUESTED AND OBTAINED A MEETING WITH MR. MEESE'S STAFF WITHIN FOUR DAYS.

I SHOULD ALSO POINT OUT THAT EVEN ON ISSUES THAT HAVE ALLUDED AGREEMENT, ISSUES LIKE THE COP KILLER BULLET BILL, OUR DIALOGUES HAVE BEEN FRANK AND FRUITFUL. DIFFERENCES HAVE ALWAYS BEEN TREATED AS HONEST DIFFERENCES AMONG PROFESSIONAL COLLEAGUES.

I DO NOT KNOW WHAT MORE I CAN SAY OTHER THAN BY CONFIRMING MR. MEESE AS ATTORNEY GENERAL OF THE UNITED STATES, THE COMMITTEE ON THE JUDICIARY AND THE U.S. SENATE PROVIDE OUR PRESIDENT AND THE AMERICAN PEOPLE WITH A MAN MOST QUALIFIED TO PROVIDE CONSTANCY, FAIRNESS, FIRMNESS AND COMPASSION TO OUR COUNTRY'S CRIMINAL JUSTICE SYSTEM.

# # # #

Mr. Baldwin. Mr. Chairman, I appreciate the attention that you've given to this over the 3 days, so I will not take much time.

But I thought that it was important to make a few observations Senator East really made a very good statement when he opened the hearings, or in his opening statement.

He said that we should be candid and really say why we're for or against Mr. Meese. You've heard witnesses here deny that they have any ideological or philosophical difference with the nominee. Yet, Senator Biden and others have indicated that they found nothing wrong with him, no violation of any laws, an ethical, honest man.

I think Senator Biden went on and sounded like they were related in some way. But he was stretching to find something. I think the senators sitting on this committee realize what we're talking about, since the Stein report and the Office of Government Ethics, everybody, has come down very hard on the side of the fact that we have a very honorable, honest man.

I think that this is what the committee should be concerned about, and put politics and ideology, the philosophical differences of the ADA and the ACLU and all the leftist groups that have just finished testifying, put that in perspective for what it is. Consider the man on the basis of his qualifications.

We feel confident of Mr. Meese's qualifications. And, I'm speaking on behalf of the Association of Federal Investigators, the Federal Criminal Investigators Association, the FBI National Academy Associates, the Fraternal Order of Police, the International Union of Police Associations, the Law Enforcement Assistance Foundation, National Association of Police Organization, National District Attorneys Association, National Sheriffs' Association, the National Troopers' Coalition, Society of Former Special Agents of the FBI, and the Victims Assistance Legal Organization—all of these organizations.

The Chairman. You're speaking for all those organizations?

Mr. Baldwin. Yes. They're members of the National Law Enforcement Council of which I am executive director. And they have authorized this endorsement, which they did last March when we came in.

After reading the Stein report and after hearing the testimony, particularly in these last 3 days, I feel that we are so much more enthusiastic than we ever thought we could have been. Here is a man that is beyond reproach in any way shape or form. I'm not indicting anybody—I'll try to be courteous, but I think there are some members that probably could not stand this kind of scrutiny. And maybe as Senator Biden and others say, maybe there should be a double standard. Maybe there's something higher that we want of this man.

But I don't know as Attorney General Rogers said, how anybody could expect anybody to be more ethical than our nominee.

As you all know there was one President of the United States that nominated his brother to be Attorney General. His brother had never even practiced law 1 single day, and yet witnesses testifying just before me thought he was the greatest Attorney General of our time.

Now, these are questions of qualifications I'm asking the Senators to think about. I think that our nominee in this case far outshines anybody that I've ever known who has come before the committee for confirmation for Attorney General.

There is a member of the Senate who has a lot to say about the qualifications and the ethics of our nominee who, it was brought out in testimony, received a $200,000 fee for arranging the transfer of property, the sale of the HayAdams here in Washington. This same Senator, I understand, has used his office to pick up the phone to call people to try to save the job of a nephew. He's been called on that. Yet, he stands and says we've got to have ethics.

I think these are things, Mr. Chairman, that we really want to think about. It's very interesting when Senator Biden was running for reelection in Delaware, he was very anxious to have the endorsement of the law enforcement community, particularly in Delaware. He was the master of ceremonies for a dinner at which Ed Meese became the keynoter, and he said then: "Unless we Democrats can do something about the Presidential race, I suspect he is going to be our next Attorney General."

And the man who coordinated that, Chief Bill Brierley, so wanted to be here to say that Joe Biden told him I am going to vote for Mr. Meese for Attorney General. That was during the election.

Now, is this the kind of ethics that Mr. Biden is thinking about? I don't know. These are things that maybe the people that are going to vote against Mr. Meese ought to be conscience stricken about.

Finally I'm going to quote from the Wall Street Journal. It says, "What's really going on here," speaking of this nomination, "has been going on since William French Smith resigned. Some people simply don't want an Attorney General with the conservative views of Mr. Meese."

Mr. Chairman, that's the fact and on that point I rest my case. I think we ought to consider the man's qualifications and consider the comments that have been made by those opposed to him.

Thank you.

The CHAIRMAN. We will be glad to hear from the next witness, whichever one wishes to go next. Ms. Roper, do you wish——

Ms. ROPER. Mr. Chairman, and members of this committee, I am pleased to have this opportunity to testify in support of the confirmation of Edwin Meese as Attorney General of the United States.

My name is Roberta Roper and I am speaking as an individual citizen and a victim of violent crime. Because of the events that began in 1982, and continue to today, and beyond, my family and I remain what those events made us, victim citizens.

On April 3, 1982, our daughter Stephanie's beautiful, vibrant 22-year-old life was destroyed, and the structure of our family life was shattered. That was only the beginning of our victimization.

It was repeated throughout the criminal justice proceedings and sentencing, producing a life-long sentence for us, and not for her offenders.

With my husband, Vince, I cofounded the Stephanie Roper Committee in Maryland. Our legislative efforts are focused on the improvement of the criminal justice system in Maryland, its administration, its sentencing processes, and its treatment of victims of violent crime. It is unfortunate that the confirmation of Mr. Meese has been delayed by unwarranted questioning of his fitness for this office. It would appear that some people do not want an Attorney General with the law and order views of Edwin Meese. There is a tragic irony in the arguments used against Mr. Meese.

These arguments turn the principles of common law inside out. They would have us reject the accepted concept that people are considered innocent until proven guilty. They would continue to raise accusations, damage reputations and ignore vindications.

They would have us accept unproven allegations as a fatal, final burden. They would judge him unworthy of your confirmation. Indeed, Mr. Meese and his family would, like so many of us, become victims of a process in which truth and justice get lost in the law.

As at no time before, citizens and victims are looking to their State and Federal Government for workable solutions to the epidemic of violent crime. They have learned that there are no safe communities free of crime.

They have tolerated a system that imposes lenient sentences for violent offenders and callously ignores the needs and rights of innocent victims. But they will no longer tolerate such flagrant abuses.

We are representative of thousands of citizens working within the structure of the law to improve the criminal justice system in our States. While citizens and victims have had a growing recognition of the seriousness of America's crime problem, it is individuals like Edwin Meese who have provided the leadership and the solutions with the commonsense approach to crime, punishment and justice.

That is why I urge your speedy confirmation of Edwin Meese as Attorney General. Mr. Meese's aggressive leadership in law and order would maintain a balance of rights to accused criminal offenders and society.

I believe that that balance represents the values of a decent law abiding America. Mr. Meese's experience as a veteran prosecutor and law enforcement officer provides him with the first-hand knowledge and skills to attack the problems of crime we as a nation must solve.

We naturally look to the Federal Government to provide a model for our individual States. After many years of struggle toward passage, Congress passed such a model, the Comprehensive Crime Control Act in October of 1984.

With Mr. Meese as Attorney General, I believe that this series of laws could be fully implemented to benefit all of us. The public, once again, might be assured that their government is required to keep its part of the social contract and protect their lives.

No individual citizen should feel the need for private vengeance. Mr. Meese's essential integrity, decency, and personal and political morality have remained secure throughout a long career of dedicated public service. I do not believe that they have changed during this long grueling confirmation process.

Mr. Meese's principal flaw is that he has no great personal wealth. Had he sought to enhance that material wealth, he would not be seeking your confirmation now.

I sincerely believe that most sensible citizens recognize that the unproven allegations against Mr. Meese are without merit. These allegations are full of scholarly rhetoric but they do not apply to Mr. Meese or the situation.

I ask you to judge him by his public record of service, and confirm his appointment as Attorney General of the United States.

And in closing, with all due respect to Mr. Archibald Cox, I must take exception to a closing paragraph in his commentary article, Outlook section in last Sunday's Washington Post, and I quote. "The president of a large university asked me last spring, how can you and I try to teach young men and women to recognize moral standards, if the Senate votes that what Ed Meese did does not bar his confirmation as Attorney General of the United States."

I would ask Mr. Cox to talk to my children. How can I continue to teach them moral standards? Ask them about a system of justice that responds to the needs and rights of a criminal offender rather than to them as innocent victims? Ask them why a convicted criminal's offender's rights are seen more valid than theirs? They would tell you that the system called justice destroyed their dreams, their faith and their respect for the law.

They feel empty and dead. Mr. Meese's confirmation represents renewed hope for equal justice for all and a fervent hope for restored trust. It might allow my children and all like them to build new dreams.

Thank you very much.

The **Chairman**. I believe you are the mother of Stephanie Roper who was raped and killed?

Ms. **Roper**. I am.

The **Chairman**. What was the outcome of that trial?

Ms. **Roper**. It continues today. At that time, in October of 1982, both the convicted offenders were given concurrent life sentences, making them eligible for parole, from that date, in 11 years and 7 months. Since that time, another jurisdiction, because the crime occurred in several, has filed and gotten an indictment on separate crimes for which they were never tried.

The defense argued through the Court of Appeals in Maryland all the way to the Supreme Court, and the Supreme Court found those, their charges without merit, and we are now preparing for new trials in Prince Georges County.

The **Chairman**. Thank you very much, Mrs. Roper. Now, let's see. Now you give your name and your title, and who you represent.

Mr. **Devine**. Yes. I am James T. Devine of the law firm of Jerris Leonard & Associates, Mr. Chairman. We are counsel for the International Union of Police Associations, AFL-CIO.

What I would like to do is present, without oral testimony, the written testimony of Robert B. Kliesmet, international president of the union. It is in support of the Honorable Edwin Meese III, to be Attorney General of the United States.

The only other comment I would like to offer at this time is, I listened to, a short time back, one of the witnesses tearing people apart back in the 1930's for any divergence from his concept of morality. I have been around the town quite a while, too, but I do not find all morality and ethics disappearing from Washington at this present time. The fact is, I think if you had been here today, and seen the example of the gentlemen who testified on the government ethics discussion, he would find that they were pretty ethical, they were pretty hardworking, they did a good job, they presented a good report, and I think they did a good job in supporting basic concepts that ethics are a part of the government.

I think, if you analyze their report, you have to go along pretty much with the morality and ethics of Ed Meese. Thank you very much.

The CHAIRMAN. Thank you. The distinguished Senator from Alabama. The distinguished Senator from Uath.

Senator HATCH. I have no questions. I want to thank all of you for coming. I really appreciate your statements.

The CHAIRMAN. Thank you, ladies and gentlemen for your appearance.

I have received a communication from Mr. Ken Reasoner, director of the Regional Information-Sharing Systems, expressing strong support from this organization for the confirmation of Mr. Meese. This organization I believe has a Regional Organized Crime Information Center with headquarters in Nashville, TN.

Chief Preston Strom of South Carolina is a strong supporter of this organization, and from the information I have received, this organization is doing a very fine job.

Now, let's see. I believe that brings us down to Panel 6, Jeffrey Levi, Washington representative of the National Gay Task Force, Washington, DC. If you will come around, Mr. Levi. And Mr. Ira Nerken, director, Old Values, New Visions, Washington, DC. If you gentlemen will hold up your hands to be sworn.

Will the testimony you give in this hearing be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LEVI. Yes.

Mr. NERKEN. Yes.

The CHAIRMAN. Have seats. Mr. Levi, you have a statement you would like to make?

Mr. LEVI. Yes.

The CHAIRMAN. Do you want to put your whole statement in the record or——

Mr. LEVI. Yes, we have submitted that to the committee already.

The CHAIRMAN. All right. The entire statement will go in the record and now you have 5 minutes.

STATEMENT OF JEFFREY LEVI, WASHINGTON REPRESENTATIVE OF THE NATIONAL GAY TASK FORCE

Mr. LEVI. My name is Jeffrey Levi. I am the Washington representative of the National Gay Task Force, the oldest and largest gay and lesbian civil rights organization in the country.

Mr. Chairman, the National Gay Task Force joins its colleagues at the Leadership Conference On Civil Rights in opposing the nomination of Edwin Meese as Attorney General of the United States.

As the defender of the laws and Constitution of the United States, the Attorney General must be a person of high integrity and someone firmly committed to defending the civil rights of the citizens of this country.

On both counts, Edwin Meese is not worthy of this committee's confirmation. Other witnesses have outlined the numerous instances when Edwin Meese has chosen self-interest and favoritism over compliance with the ethical standards established for high-level Government officials.

Mr. Chairman, my organization represents 23 million gay and lesbian Americans who still have not been accorded their full civil rights as U.S. citizens, and so we are deeply concerned about how Mr. Meese would lead the agency assigned the task of defending the civil rights of all Americans.

The civil rights record that this administration and Mr. Meese bring to this hearing is what raises such serious concern to us. Time only permits a quick outline of those concerns. Our prepared statement amplifies on these issues.

Those of us who have long been active in the civil rights community, fighting for the rights of all minorities, firmly believe that all individuals and institutions should obey civil rights laws, without exception.

Mr. Meese does not seem to agree. He seems willing to bargain away the rights of minorities as he did in the Bob Jones case.

If our civil rights laws are to have any meaning, we cannot allow them to be undermined by granting wholesale exceptions along the way.

The Bob Jones case is of particular importance to our community because in both New York City and in Washington, DC, the Catholic Church has been making arguments saying that they are also exempt from enforcement of civil rights laws that protect the rights of gay men and lesbians.

All too often bigotry is expressed violently. Most minority groups in this country have experienced this kind of hatred, and gay and lesbian Americans are no exception.

An NGTF survey of eight major cities shows that one-fourth of gay men and more than one-tenth of lesbians have been the victims of violent attacks simply because they are gay or lesbian. For most other minorities, this type of violation is considered a civil rights violation and the Justice Department can press Federal charges. The gay and lesbian community cannot even get the Justice Department to collect data on this problem, let alone consider remedies.

Mr. Meese would also have jurisdiction over immigration law enforcement. Under public health provisions of current law, gay men and lesbians can be excluded from entry into the United States. These reflect an attitude toward homosexuality rejected long ago by the medical establishment, including the U.S. Public Health Service. Nonetheless, the Justice Department last year ordered PHS physicians to violate their own ethical canons by directing them to resume enforcement of these provisions in the ninth circuit.

Another concern of the gay and lesbian community regarding the Justice Department is the decades of surveillance and infiltration by the FBI of gay and lesbian political and social organizations, infiltration that we are not sure has stopped to this day.

This is a concern about the Department that reaches beyond our community, and one that is more compelling, given Mr. Meese's record as district attorney in Alameda County, where he accused antiwar protesters of giving aid and comfort to the enemy and authorized undercover agents to infiltrate the Berkeley Vietnam Day Committee.

For ethical and policy reasons, Edwin Meese simply does not meet the high standards we should set for our Nation's chief law enforcement officer.

I urge you once again to reject his nomination and advise the President to submit a candidate more worthy of this position.

Thank you very much, Mr. Chairman.

[The following was received for the record:]

PREPARED STATEMENT OF VIRGINIA M. APUZZO
EXECUTIVE DIRECTOR, NATIONAL GAY TASK FORCE

Mr. Chairperson, the National Gay Task Force joins its colleagues at the Leadership Conference on Civil Rights and Common Cause in opposing the nomination of Edwin Meese as Attorney General of the United States. As the defender of the laws and Constitution of the United States, the Attorney General must be a person of high integrity and someone firmly committed to defending the civil rights of the citizens of this country. On both counts, Edwin Meese is not worthy of this committee's confirmation.

Other witnesses, most notably from Common Cause, will have outlined the numerous instances when Edwin Meese has chosen self-interest and favoritism over compliance with the ethical standards established for high-level government officials. Whether in supporting government jobs for his creditors or in seeking government privileges to which he should not have been entitled, Mr. Meese has forfeited the moral example that any Attorney General must be able to set. Mr. Meese may not have violated any laws, but he has certainly violated Exectuve Order 11222, which warns against conduct that might even "create the appearance of...giving preferential treatment."

Mr. Chairperson, my organization represents 23 million gay and lesbian Americans who still have not been accorded their full civil rights as U.S. citizens--and so we are deeply concerned about how Mr. Meese would lead the agency assigned the task of defending the civil rights of all Americans. Within the federal government and throughout the United States, lesbians and gay men continually face discrimination in the workplace, in housing, in their relationship to the criminal justice system, and in the conduct of their everyday lives. The civil rights record that this Administration and Mr. Meese bring to this hearing give little hope to the lesbian and gay community that a Justice Department under Edwin Meese will play a positive role in mitigating the discrimination we face. Let me outline just a few of those concerns:

o Those of us who have long been active in the civil rights community--fighting for the rights of all minorities--firmly believe that all individuals and institutions should obey civil rights laws without exception. Mr. Meese does not seem to agree. He seems willing to bargain away the rights of minorities, as he did in the Bob Jones case. While the Administration's position that a religious institution could discriminate on the basis of race was overturned by the Supreme Court, these very same arguments are now being used by Georgetown University in Washington, D.C. and the New York Archdiocese to seek exemption from local requirements that they not discriminate against gay men and lesbians if they wish to receive public funds. If the civil rights laws enacted after so much struggle and debate are to have any meaning, we cannot allow them to be undermined by granting wholesale exceptions along the way or by having an Attorney General who might even give the suggestion that he might look the other way if certain institutions chose to violate them.

o All too often, bigotry is expressed violently. Most minority groups in this country have experienced this kind of hatred--and gay and lesbian Americans are no exception. An NGTF survey of eight major cities showed that one-fourth of gay men and more than one-tenth of lesbians have been the victims of violent attack simply because they are gay or lesbian. For most other minorities, this type of violence is considered a civil rights violation and the Justice Department can press federal charges. Yet the gay and lesbian community cannot even get the Justice Department to collect data on this problem, let alone consider remedies.

o Mr. Meese would also have jurisdiction over immigration law enforcement. Under public health provisions of current law, gay men and lesbians can be excluded from entry into the United States. These reflect an attitude toward homosexuality rejected long ago by the medical establishment, including the U.S. Public Health Service. Nonetheless, the Justice Department last year ordered PHS physicians to violate their own ethical canons by directing them to resume enforcement of these provisions in the Ninth Circuit. The Department's energies and American taxpayers' dollars would be better spent in working with Congress to produce immigration reform that is fair to all--gays and lesbians, Hispanics, political and cultural figures, and others who have been treated unjustly by the existing immigration system.

o Another concern of the gay/lesbian community regarding the Justice Department is the decades of surveillance and infiltration by the FBI of gay and lesbian political and social organizations. There is evidence showing that the legitimate political organizing of our community was the subject of intensive and consistent surveillance between 1950 and 1980--and there is no guarantee that it has stopped today. This is a concern about the Department that reaches beyond our community, and one that is made more compelling given Mr. Meese's record as district attorney in Alameda County--where he accused antiwar protestors of giving aid and comfort to the enemy, and authorized undercover agents to infiltrate the Berkeley Vietnam Day Committee. This attitude toward those who were exercising their constitutional rights does not give reassurance to those of us who continue to exercise ours.

For ethical and policy reasons, Edwin Meese simply does not meet the high standards we should set for our nation's chief law enforcement officer. I urge you once again to reject this nomination and advise the President to submit a candidate more worthy of this position.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Lewis.

Mr. Nerken, would you care to go ahead?

STATEMENT OF IRA NERKEN, DIRECTOR, OLD VALUES, NEW VISIONS, WASHINGTON, DC

Mr. NERKEN. Yes, Mr. Chairman.

The CHAIRMAN. Do you want your entire statement put in the record?

Mr. NERKEN. I would. I also would request that the committee place in the record an article which I coauthored with Peter Rosazza—one of the Catholic bishops, who recently authored the pastoral letter on social justice and the economy, on the Meese nomination, which appeared in the Hartford Courant on Monday.

Might I place that in the record also?

The CHAIRMAN. Without objection, we will put both in, and you have 5 minutes.

Mr. NERKEN. Thank you. My name is Ira Nerken. I am an attorney and director of Old Values/New Visions, a new project designed to recover the Nation's political traditions and religious values as a basis for creating a more responsible and caring politics.

I will abbreviate my remarks, but would like to concentrate for a moment on the abbreviation of these hearings. I think they are unfortunately being rushed at a great loss to the committee, to the Senate, to the country, and, most importantly, to Mr. Meese. For while these hearings may have sensitized Mr. Meese as to ethics and how they should be applied, his understanding of a key value in our society, that of justice, has been left relatively untouched and certainly has not been given the attention that it deserves.

Mr. Meese seeks to head the Department of Justice, and there is no value more central to the Nation's religious and secular traditions than justice. Yet through his public remarks and actions, addressing the plight of the poor and powerless among us, Mr. Meese has at the very least raised grave questions on this score.

I am not opposing Mr. Meese's nomination; I am simply asking the Senate to note the impending failure of this body to adequately address Mr. Meese's sensitivity on this critical issue.

I respectfully suggest that fuller and further hearings by the Senate are appropriate and in fact necessary to sensitize Mr. Meese on the value of justice.

Let me just focus on Mr. Meese's most disturbing remarks, which caused a nationwide uproar in Christmas of 1983. There were reports of hunger that winter tearing at the Nation's conscience. Yet, Mr. Meese refused not only to acknowledge the need or even the existence of hunger, but dismissed reports of responsible organizations, questioning their motivations, and said he believed that the poor actually did have money but "they go to soup lines because food is free and that is easier than paying for it."

When later chastised for his remarks, he thought the problem worthy of simply a joke, saying Dickens' Scrooge got similar treatment from the press.

What does this all have to do with justice? I suggest everything, from a Judeo-Christian perspective. For, as the Catholic bishops recently noted in the draft pastoral letter on the economy, our religious tradition "regards the treatment of the poor as a litmus test of the justice or injustice of a community." The biblical word for justice, "sedaqah," it also signifies caring for the poor.

Going a step further, the Bible emphasizes the importance within the concept of justice of defending the poor and powerless, who are most in need of the protector or advocate. The historic role of the Justice Department, as this committee has assured in the past, is to respond to that need for protection.

Yet Mr. Meese has been at the forefront of efforts to abolish governmental legal services and to limit court-ordered fees to attorneys, even as he realizes how dear justice may be, for he has applied himself for very large fees.

Again, I am not saying the man is unfit, but he ought to be sensitive to the double standard that that would seem to imply.

The ethical matters before this committee have dealt with the way that Mr. Meese has applied his values to essentially private transactions, in most cases. The Senate's concern, I suggest, ought to go beyond this. It ought to go to the way that Mr. Meese interprets his values. His values may be the best—but the question is how he brings them to bear on his public acts. He deserves the opportunity, as does this Nation, to assure that our Attorney General will be sensitive.

To suggest further hearings, from my knowledge of Senate Judiciary hearings, is in no way to suggest that this committee go beyond precedent, for certainly in the past the committee has, for example, sensitized judicial candidates on questions of racial discrimination. In fact, if remarks similarly slanderous of Jews or blacks had been made to those that Mr. Meese made about the poor, the most vulnerable among us, I think there is little question that full Senate hearings would be held on the issue.

In conclusion, let me simply quote from Appeals Court Judge Irving R. Kauffman who, in a recent article on judicial decisionmaking, explained the role of values and ideals in that process. Writing of the experience of judging, he said that it "must never be cut off from a community's ideals." "Our individual beliefs," he observed, "are inextricably tied to our perceptions of the common weal." The challenge for a judge "is to ensure that those perceptions are not narrowed by ignorance."

A similar obligation and challenge confronts the Nation's chief law enforcement officer, the Attorney General, and confronts this committee. Only through further hearings can this committee assure the Senate and the country that Mr. Meese is not cut off from the community's ideals, that he is sensitive to the plight of the poor and vulnerable among us, and that he will bring to his task, if confirmed, the understanding that justice requires.

Thank you.

[The following statement and newspaper article were received for the record:]

STATEMENT OF IRA NERKEN
ON THE NOMINATION OF EDWIN MEESE

My name is Ira Nerken. I am director Old Values/New Visions, a project designed to recover the nation's political traditions and religious values as a basis for a more responsive and caring politics.

The last several years have seen much public discussion about how we relate our most deeply held values to our politics, or are failing to do so. The concern reflects not only the religious convictions of many, but our needs as a free and democratic people. It is in this regard that I wish to discuss the nomination of Edwin Meese III as Attorney General.

John Richard Neuhaus, in his much noted recent work The Naked Public Square, joins many in calling for the reconstruction of a "public ethic." While he faults our politics for "systematically excluding... values of the American people...that are overwhelmingly grounded in religious belief," historian John Diggins--in his recent survey of American political thought--makes the broader point that "the strength and future of a republic depends upon its capacity for periodic self-renewal through the reaffirmation of the ideas that once inspired it." All well and good, but how do we go about doing so?

The Senate Judiciary Committee's consideration of the nomination of Edwin Meese III for Attorney General--while confronting this body, and Mr. Meese, with disturbing questions--also presents an important opportunity for reconstructing our "public ethic" and reaffirming basic American values.

Mr. Meese seeks to head the nation's Department of Justice, and certainly, there is no value more central to the nation's religious and secular traditions than justice. Yet, through public remarks and actions addressing the plight of the poor and powerless among us, Mr. Meese has raised the gravest doubts about his full and sensitive understanding of justice, and the role it is meant to play in our society.

With the Special Prosecutor having found no basis for criminal indictment of Mr. Meese, the Senate seems ready for a "rush to Justice," speeding the nomination through with little time for careful thought. However, to sensitize the nominee on this most critical of issues, I respectfully suggest, that the Senate should conduct the fullest hearings precisely to assure Mr. Meese's sensitization to the demands of justice.

Perhaps the most disturbing statements made by Mr. Meese were those at Christmas in 1983. With reports of hunger that winter tearing at the nation's conscience, Mr. Meese refused to acknowledge the need, or even the existence, of the hungry. Dismissing reports of responsible organizations that the poor in fact were going hungry, Mr. Meese said that he believed that the poor "have money" for food, but "they go to soup lines because the food is free and that's easier than paying for it." When later chastized for his remarks, he treated the matter as a joke, suggesting that he, no worse than Dickens' Scrooge, deserved better treatment by the press.

What has all this to do with justice? From a Judaeo-Christian perspective, everything. As the Catholic Bishops recently noted in their draft pastoral letter on the economy, our religious tradition "regards the treatment of the poor as the litmus test of the justice or injustice of a community." The biblical word for righteousness and justice, sedaqah, also signifies caring for the poor.

Going one step further, biblical discussions of justice stress that the poor and powerless are most alone and vulnerable in society, and are thus most in need of a protector or advocate. The historic role of the Justice Department, as most recently seen in the enforcement of civil rights, responds to that concern. Yet Mr. Meese's efforts to abolish government legal services for the poor, and to limit court awarded fees to attorneys for victorious civil rights plaintiffs, run counter to this tradition. Mr. Meese is not unaware of how dear justice is in our society, for even as he works to assure that the federal government deny legal services to the poor, he has asked that same government to pay over $700,000 to his attorneys for their work before the special prosecutor.

The ethical matters investigated by the special prosecutor go to the sensitivity and judgment with which Mr. Meese has applied his values to essentially private acts. The Senate's concern should go beyond this, to the sensitivity and judgment with which Mr. Meese applies our most deeply held values to public acts. It is that disturbing but critical question which confronts the Senate in these hearings. It demands your careful attention.

To suggest that Senate hearings, with Mr. Meese's full participation, could sensitize Mr. Meese and raise his consciousness of public values embraces a central purpose the Senate confirmation process has so often served. In the past, confirmation hearings played an important role in making racial equality part of our "public ethic," sensitizing judges and other judicial appointees. Indeed, had Mr. Meese made remarks slandering Blacks or Jews, instead of the poor--the most powerless minority--there is little question that full Senate hearings would be held on the issue.

Mr. Meese's reluctance to acknowledge the plight of the poor and powerless, as seen in his dismissal of authoritative reports of hunger, touches an area of increasing concern in the Senate confirmation process--what one scholar of that process has called the Senate's concern for "predispositional conflicts of interest." Professor Calvin Mackenzie has written that, unlike financial conflicts of interest, the problem with such conflicts "is not that an appointee may be inclined to make governmental decisions that have a salutary effect on his net worth. Instead, the problem is that appointees may be unable, because of their personal preferences and prejudices, to make objective or impartial decisions. It is not a financial conflict, but one of attitudes or emotions." Mr. Meese's attitude toward the poor and vulnerable is disturbing enough to be a central concern in these proceedings.

Federal Appeals Court Judge Irving R. Kauffman, in a recent article, eloquently explained the role that values and ideals should play in the work of our judicial officers. Writing of the "experience of judging," he said that it "must never be cut off from a community's ideals." "Our individual beliefs," he observed "are inextricably tied to our perceptions of the common weal." The challenge for a judge, "is to ensure that those perceptions are not narrowed by ignorance." A similar obligation and challenge confronts the nation's chief law enforcement officer, the Attorney General. Only through full Senate hearings can the Senate assure that Mr. Meese is not 'cut off from the community's ideals,' and that he bring to his task the understanding justice requires.

The Hartford Courant Monday, January 28, 1985

ATTORNEY GENERAL

David Wiley Miller / Graphic Impressions

Edwin Meese III

A Chance To Re-Examine Nation's Concept of Justice

Peter A. Rosazza
and Ira Nerken

Recent public concern over how to relate deeply held values to politics reflects not only the religious convictions of many, but our needs as a free and democratic people.

In calling for the reconstruction of a "public ethic" in "The Naked Public Square," John Richard Neuhaus faults politics for "systematically excluding . . . values of the American people that are overwhelmingly grounded in religious belief."

And historian John Diggins makes the broader point that "the strength and future of a republic depends upon its capacity for periodic self-renewal through the reaffirmation of the ideas that once inspired it." All well and good, but how do we go about doing so?

The Senate's upcoming hearings on the nomination of Edwin Meese III for attorney general — while confronting the Senate, and Meese, with disturbing questions — would also present an opportunity for reconstructing the public ethic and reaffirming American values.

Meese seeks to head the nation's Department of Justice. Certainly there is no value more central to the nation's religious and secular traditions than justice. Yet, through public remarks and actions addressing the plight of the poor and powerless, Meese has raised grave doubts about his understanding of justice and the role it is meant to play in society.

The Senate Judiciary Committee, in light of the special prosecutor's report, is expected to approve the nomination speedily.

Perhaps the most disturbing statements made by Meese were those at Christmas in 1983. With reports of hunger that winter tearing at the nation's conscience, Meese refused to acknowledge the needs or even the existence, of the hungry.

Dismissing reports of responsible organizations that the poor in fact were going hungry, Meese said that he believed that the poor "have money" for food, but "they go to soup lines because the food is free and that's easier than paying for it."

What has all this to do with Judaeo-Christian notions of justice? Everything. As the Catholic bishops noted in their draft pastoral letter on the economy, religious tradition "regards the treatment of the poor as the litmus test of the justice or injustice of a community."

Biblical discussions of justice stress that the poor and powerless are most alone and vulnerable in society, and are thus most in need of a protector or advocate, the historic role of the Justice Department, as most recently seen in the enforcement of civil rights, responds to that concern.

Yet Meese's efforts to abolish government legal services for the poor, and to limit court awarded fees to attorneys for victorious civil rights plaintiffs, run counter to this tradition.

Meese is not unaware of how dear justice is in society, for even as he works to assure that the federal government deny legal services to the poor, he has asked that same government to pay more than $700,000 to his attorneys for their work before the special prosecutor.

To suggest that Senate hearings, with Meese's full participation, could sensitize Meese and raise his consciousness of public values is not to urge on the Senate a new or unusual role. Rather, it embraces a central purpose the confirmation process has so often served. In the past, confirmation hearings played an important role in making racial equality part of the public ethic, sensitizing judges and other judicial appointees.

Federal Judge Irving R. Kaufman recently wrote that "the experience of judging must never be cut off from a community's ideals. Our individual beliefs . . . are inextricably tied to our perceptions of the common weal."

The challenge for a judge, he continued, "is to ensure that those perceptions are not narrowed by ignorance."

A similar obligation and challenge confronts the nation's chief law enforcement officer, the attorney general.

Only through full Senate hearings can the Senate assure that Meese is not "cut off from the community's ideals" and that he brings to his task the understanding justice requires.

Peter A. Rosazza, auxiliary bishop of the Roman Catholic Archdiocese of Hartford, is one of the authors of the bishops' draft pastoral letter on the U.S. economy and Catholic social teaching. Ira Nerken is an attorney and director of Old Values/New Visions, a public interest project in Washington, D.C.

The CHAIRMAN. Thank you. Distinguished Senator from Alabama.

Senator HEFLIN. Mr. Levi, did I understand you to say that you represent 23 million Americans?

Mr. LEVI. Well, our organization represents the gay and lesbian community in this country, and, if one accepts the standard percentage of 10 percent of all people are gay or lesbian, then one would say 23 million.

Senator HEFLIN. That's all.

The CHAIRMAN. Distinguished Senator from Utah.

Senator HATCH. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you, gentlemen, for your presence. Without objection, we are going to place in the record a statement by the distinguished majority leader of the Senate, Robert Dole, endorsing the confirmation of Mr. Meese, and this statement should appear the first day of the hearings.[1]

I want to announce, in view of the statements of the distinguished Senator from Ohio, indicating a number of columns and editorials against Mr. Meese, I want to, without objection, place in the record articles by National Review, the New York Times, San Francisco Progress, San Diego Union, the Wall Street Journal, Sacramento Union, Copley Editorial Service, AP News analysis by Mike Finesilver, St. Louis Globe, New Republic, Washington Times, Washington Post, New York Post, Wyoming State Tribune, Albuquerque Journal, Houston Chronicle, San Francisco Examiner, Indianapolis Star, the Oakland Post, Cincinnati Enquirer, the State Journal Register, Springfield, IL, the Wichita Eagle-Beacon, Chattanooga News Free Press, Contra Costa Times.

[The following newspaper articles were received for the record:]

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[1] Sen. Dole's statement can be found on page 81.

NATIONAL REVIEW
Feb. 8, 1985

Meese and the Law

EDWIN MEESE, who is as honorable and selfless as any man in public life today, will apparently have to undergo one last bout of character assassination before his confirmation as Attorney General of the United States.

The report of the independent counsel charged with investigating allegations against Meese showed that he was guilty of violating no rule other than the one that might be called Metzenbaum's Law: That public office is the preserve of the very rich. Faced with a financial crisis when he was unable to sell his house in California after moving to Washington, Meese persuaded his bank to grant an extension of time for mortgage payments instead of foreclosing, borrowed money from his accountant and from a close friend, and eventually was able to sell his house. Some of the people involved in these transactions (like virtually everyone Meese knew well or did business with) were also friends of other Administration officials or of President Reagan himself. Several later received low-level government appointments through their other contacts in the Administration—not through Meese. In no instance was it found either that the business transactions were improper in themselves or that they had anything to do with the appointments.

A memorandum, now being circulated by Common Cause, however, suggests that the independent counsel's report exonerates Meese only of *criminal* wrongdoing. The memorandum argues against Meese's confirmation on the ground that his perfectly legal business transactions gave rise to an "appearance of impropriety." But the appearance is in the eye of the beholder. Common Cause overlooks the fact that the very things that make it improper for government officials to engage in certain business transactions also make these transactions illegal. If, as the independent counsel found, none of these factors was present in any of Meese's dealings, it can only have been because they were conducted at arm's length and were therefore entirely proper.

The Common Cause memorandum also makes much of the fact that Meese—who has participated in meetings at which thousands of names were discussed for various positions in government, and whose office has received many thousands of letters—was in some instances unable to remember whether he had heard names discussed or read letters people said they had mailed to him.

Under the standard implicitly suggested by Common Cause, Meese was bound either to declare bankruptcy rather than borrow money to save his home, or to keep a list of the people with whom he did business in order to veto them in the event other people chose them for jobs for which they were well qualified. Official misconduct used to be made of sterner stuff.

26 APR 1984

NEW YORK TIMES

Be Fair to Meese

By Lloyd N. Cutler

WASHINGTON — Although the independent counsel appointed to investigate Edwin Meese 3d, the President's counselor, has just begun his work, many are saying that Mr. Meese is not fit to be confirmed as Attorney General and ought to withdraw his name now — no matter what the independent counsel concludes.

As one who supported the original special-prosecutor law and its extension in 1982, I believe this position offends the basic principle of this important post-Watergate reform. The decision to appoint an independent counsel is not a judicial judgment of guilt. It is not even a judicial accusation of guilt, as a grand jury indictment would be. It is merely a recognition that there is a reasonable basis for investigating whether a crime may have been committed by a top-ranking member of the incumbent Administration.

Since the Attorney General would appear to have a political conflict of interest in conducting such an investigation, the job of investigating further and deciding whether to present charges to a grand jury is turned over to an independent counsel. (The title of the investigator was changed in 1982 from "special prosecutor" to "independent counsel" to avoid an implication either of guilt or an accusation of guilt against the subject of the inquiry.)

Mr. Meese has not yet been officially accused of any criminal act. The independent counsel may conclude that no such accusation is justified. That would not automatically mean that Mr. Meese was fit to be confirmed as Attorney General. That judgment depends on two factors: his credentials and record apart from the events under investigation by the independent counsel, and on the bearing of these events, even if they do not justify criminal charges, on Mr. Meese's fitness for the office.

On the first point, his academic and professional records, he may not be up to the standards of distinction set by Nicholas deB. Katzenbach and Edward H. Levi, but he compares favorably with most of our Attorneys General. The President plainly trusts Mr. Meese and is prepared to rely on his advice. While many of us have publicly disagreed with his views on particular issues of civil rights and criminal justice, his record places him well within the range of discretion that Presidents have been and should be granted in selecting their Attorneys General.

The second point is more subtle. Even if Mr. Meese's actions are not found to warrant criminal prosecution, they may amount to a civil violation of the Ethics in Government Act. And even if they do not amount to a civil violation, they may still justify an inference that Mr. Meese has been too inattentive and irresponsible about his personal legal duties as a public official to make a credible Attorney General. But until the independent counsel finishes his work and reports his findings, we cannot fairly pass judgment on any of these issues.

Even then, the independent counsel's full report to the court cannot legally be published unless the court finds it in the public interest to do so. In the three cases to date where a report declining to prosecute was filed, the court made the full report public only in the case of Hamilton Jordan, President Jimmy Carter's chief of staff. It published an excised version in the investigation of Raymond J. Donovan, Mr. Reagan's Secretary of Labor, and nothing at all in the case involving Timothy Kraft, President Carter's appointments secretary. In the event that a report declining prosecution is filed, Mr. Meese ought to request that the court promptly publish it in full. This would best serve the public interest as well as his own. Only then would the Senate and the public have an informed opportunity to advise on and consent to his accession to the highest lawyer's office in the land.

Until then, *fairness* to Mr. Meese, as well as a decent respect for the principles of the law creating the independent counsel, oblige us all to reserve our judgment.

Lloyd N. Cutler, a lawyer, was counsel to President Jimmy Carter.

24 JAN 1985

NEW YORK TIMES

Pay the Meese, and Jordan, Bills

Lawyers for Edwin Meese, President Reagan's nominee for Attorney General, are asking a Washington court to award more than $700,000 in fees for work to clear him of criminal wrongdoing. That creates a problem for the Justice Department, which almost reflexively resists high fee awards. It has asked the court for more time to give its views. If the department wants to advance the aims of the Ethics in Government Act, it won't oppose a generous award.

The department has been arguing routinely that successful civil rights plaintiffs deserve no more than $75 an hour in legal reimbursements, an amount Washington attorneys consider meager. Mr. Meese's lawyers are said to ask $250 an hour, close to the going rate in Washington.

Their accomplishments for Mr. Meese certainly deserve the going rate. They represented him over the course of a six-month inquiry by a special counsel, Jacob Stein. They succeeded in persuading Mr. Stein that there was no evil motive, and thus no criminal intent, in a pattern of favors for Mr. Meese by persons who later got good government jobs.

Two years ago, Congress sensibly amended the 1978 Ethics in Government Act to pay the legal costs of persons who successfully defend themselves when investigated by a special counsel. The idea is that they cannot be credibly cleared by the Attorney General, their colleague. Congress considered it only fair to reimburse officials who are cleared and who probably wouldn't have been so carefully investigated at all but for their high office.

The issue arose in part because of Hamilton Jordan, chief of staff in the Carter White House, who was completely cleared of drug charges but was saddled with a big lawyers' bill. Unfortunately, Congress forgot to include Mr. Jordan in its 1983 amendments and a court recently denied him compensation. Another amendment to the law is in order to benefit him.

As for Mr. Meese, the independent counsel's report does nothing to qualify him for the job of Attorney General, but it does entitle him to reasonable compensation for the cost of defending himself.

SAN FRANCISCO PROGRESS, Jan. 13, 1985

A2 S.F. Progress Sun., January 13, 1985 567

Thinking out loud

By Nathan Cohn

Our government was organized to guarantee its permanence.

The men who desired to live in a democracy designed a government of checks and balances.

We have three branches of government: the executive, the judicial and the legislative.

The three branches were set up to guarantee that our form of government would protect itself within its own framework.

The legislative branch makes the laws for our people.

The judicial branch determines the legality of these laws.

The executive branch executes these laws if they are recognized as constitutionally legal by our judicial branch.

The president of the United States, who is elected by the people, heads the executive branch.

Our forefathers who designed this fantastic government either were geniuses or were the luckiest group of people in the world.

It really works.

Our freedoms are completely protected by this simple, but brilliant theory of self-government.

We have a president who has been elected by a majority of our citizens.

Under our government, even those who did not vote to elect the president are duty-bound to support the selection by the majority.

The president heads the executive branch and has been allocated the power to select men and women to assist him in his executive position.

I did not vote for our present president, but as the majority of our people elected him into office, I support him. I do not agree with many of his ideas or actions, but as he is our duly elected leader, his actions and ideas are the law of the land.

President Reagan has made many appointments to his cabinet which leave me cold, and in some instances, quite a little worried. But, the public elected Reagan and Ronnie has the right to surround himself with the people he desires to assist him in running our country.

Years ago, I tried a case with two other attorneys representing co-clients. One of the other two was an outstanding trial attorney named James Martin MacInnes. I became a little upset with our third co-counsel and remarked to Jim that our associate was an "idiot." Jim looked at me solemnly and stated, "Yes, Nate, but he's our idiot."

Reagan has recently nominated Edwin Meese III to be attorney general of the United States.

The president should have the right to select the attorney general to serve as a member of his executive team.

Some senators have objected to Meese's nomination on the grounds that Meese failed to disclose loans from close friends. The loans were for a few thousand dollars. This is understandable. Many people would consider loans of such amounts from close friends as personal obligations and might not even think of such a friendly loan as something which should be included in one's profit-and-loss statement. A loan such as this might not even be remembered as an outstanding obligation which need be reported.

Meese was questioned about the fact that a couple of close friends of his were appointed to government positions.

This is a ridiculous issue to raise in evaluating Meese's qualities for his appointment. Our political leaders appoint people they know and trust to positions in their administrations.

Jacob Stein, a special prosecutor, was appointed by a special three-judge panel to investigate the allegations regarding Meese. After a five-month investigation special counsel Stein reported that there was no basis to bring any prosecution against Meese.

If Meese had performed illegal acts or had an intent to violate the law, Meese would have never been cleared by special counsel Stein.

Politicians usually appoint people to positions in government who might assist the politician in his reelection or in election to some higher political office.

President John Kennedy appointed his brother Robert attorney general. Bobby Kennedy had no legal experience which warranted his being named attorney general. Bobby performed ably, but neither his knowledge of the essential legal procedures nor his personal experience in law would have qualified him for appointment to this position by another president.

For many years, the postmaster general of the United States was nominated not for his abilities but only because he had served as campaign manager for the successful president.

Ed Meese is a well-qualified attorney. He was a former prosecutor, professor of law and a legal adviser to Reagan before the president acquired his present position.

Meese is from this area. He has always been reputed to be an honest, decent, hard-working lawyer.

Who does a person borrow from? Friends, of course. This is the normal procedure. A person would have a difficult time attempting to borrow money from strangers.

If a person is a close enough friend to loan one money, that person would, without doubt, be a close enough friend to trust in a government position when one wishes to name people who can be trusted to such position.

Loyalty should be rewarded, not used as a device to defame the loyal one.

Since 1966, Meese has been a person Ronald Reagan trusted. Meese served Reagan for two terms as chief of staff when Reagan was governor of California.

During President Reagan's first term, Meese served Ronald Reagan as counselor to the president.

No one can fault Reagan for naming a trusted, loyal supporter to be his attorney general.

Perhaps if you or I were president, we would select someone other than Meese to be attorney general. But neither of us is president, and the selection is not ours.

The Senate Judiciary Committee should recommend the confirmation of Edwin Meese's nomination as attorney general and the Senate should follow that recommendation.

Edwin Meese III should make a competent attorney general.

As Jim MacInnes would say, "Ronnie is our president."

The San Diego Union

Col. Ira C. Copley, 1864 - 1947
James S. Copley, 1916 - 1973

Editorials/Opinion

Helen K. Copley, Publisher
Gerald L. Warren, Editor

Page B-4 A Copley Newspaper Tuesday, January 24, 1984

Fireworks, left and right

The only surprise about Attorney General William French Smith's resignation announced on Sunday was its timing. The quiet, patrician Mr. Smith never regarded himself as a fixture in the capital and, accordingly, he and his wife chose to reside in a downtown Washington hotel rather than to lease or buy a suburban home.

His departure at the end of President Reagan's first term was a given in Washington circles. That he should resign at this particular time is another vivid indication that Mr. Reagan will soon announce for a second term; Mr. Smith has been an active participant in all of the Reagan campaigns and, indeed, he said he was motivated more by politics than by a yearning for California sunshine.

That Mr. Reagan should immediately name Edwin Meese III, his White House counselor, to be the next attorney general, confirms a solid tradition in recent years of presidents appointing alter egos or very close associates to head the Department of Justice. Mr. Smith, closer to Ronald Reagan than any other Cabinet member, often described himself as "the President's lawyer." That is precisely what Mr. Meese will continue to be, assuming he is confirmed.

Without Washington experience or much knowledge of the Justice Department, the low-keyed Mr. Smith was sized up as a lightweight in the earlier days of the administration. "A society lawyer with a short attention span," sniffed *New York Times* columnist Anthony Lewis. Such contempt proved to be a bitter mistake for the liberals. The Justice Department under Attorney General Smith reshaped the face of American justice and stirred storms of controversy.

Reversing the direction of recent presidents of both parties, the department aggressively opposed busing and reverse discrimination as civil rights mechanisms, loosened antitrust restrictions, stepped up efforts against drug smuggling and organized crime, and waged an intense campaign to curb activist judges. Attorney General Smith crusaded against creation by the courts of new "fundamental rights" that benefit criminals at the expense of society.

To be sure, Mr. Smith also suffered some stunning setbacks, including defeat of his challenge to the landmark 1973 decision legalizing abortion and his attempt to restore tax exemptions to private schools judged guilty of racial discrimination.

The Meese nomination is already setting off fireworks, left and right. The liberals are exercised because they rightly fear that Ed Meese will be more visible, vigorous and even more effective than was William French Smith, they plan what one Democratic senator predicts will be "a hell of a grilling" during forthcoming Senate confirmation hearings.

The conservatives are dismayed that, with Mr. Meese departing the White House on the heels of his fellow-conservative, Judge William P. Clark, who succeeded James Watt as secretary of the Interior Department, there will be no offsetting balance to the relatively liberal pragmatism of White House Chief of Staff James Baker and his deputy, Michael Deaver.

But the special relationship between Mr. Meese and Mr. Reagan that has endured every test for almost two decades will abide and perhaps be enhanced. In any event, Mr. Meese is known to want this challenge and to be excited about the new opportunity for service. He has been a law-and-order enthusiast since his days as deputy district attorney in Alameda County during the early 1960s. In fact, he has been a police buff ever since he graduated from the University of California's Boalt Law School in Berkeley. And, before rejoining Mr. Reagan in Washington, he was director of the Center for Criminal Justice at the University of San Diego School of Law.

It would appear that, in contrast with Judge Clark who has taken a subdued approach that calms the troubled Interior Department, Ed Meese will have a much sharper image at the Justice Department than his quiet predecessor. This is apparently what President Reagan wants in both instances.

San Diegans, who remember their fellow townsman with affection and appreciation, welcome Mr. Meese's nomination to this high office with pride and high expectations.

08 JAN 1985
SAN DIEGO UNION

Confirmation due

There is every indication that the Senate Judiciary Committee will recommend that the Senate confirm Edwin Meese III, presidential counselor, to be attorney general when the issue is taken up again later this month. This will end nearly a year's delay in carrying out a key shift within Mr. Reagan's official family.

An independent special prosecutor, the respected Washington lawyer Jacob A. Stein, reported last September that there are no grounds for criminal charges against Mr. Meese in connection with any of the matters that came to light during his earlier confirmation hearings. This was no surprise to those who know Mr. Meese as a man of honesty and integrity. His sins of omission or commission involving loans, gifts and federal jobs were not those of someone intent on breaking the law. Mr. Meese did not always appreciate that innocent actions could be misunderstood when they are carried out by someone in his powerful position in the government.

Common Cause, the organization that brought some of the original accusations against Mr. Meese, won't let go of the issue. No matter what the special prosecutor says, Common Cause would like to see the Senate refuse to confirm the nomination on grounds that Mr. Meese is "blind" to ethical standards. That's reading far too much into Mr. Meese's lapses in judgment.

It's not unusual for presidents to name as Attorney General a close political associate or adviser who happens also to have appropriate credentials as a lawyer. Mr. Meese's long association with Mr. Reagan as governor, as candidate and President qualify him on the first score; his experience as a prosecutor and law professor qualify him on the second.

At the Justice Department, Mr. Meese will have the backing of a strong staff — experienced professionals who are prepared to provide expertise and continuity in their respective fields. The man in the front office, we suspect, will spend a lot of time on the phone to the White House.

30 MAY 1984

Wall Street Journal

REVIEW & OUTLOOK

The Politics of Ethics

By now we have all had a good snicker over Sen. Howard Metzenbaum.

Sen. Metzenbaum, a Democratic member of the Judiciary Committee, since March has been holding up Ed Meese's nomination for attorney general. Sen. Metzenbaum has cited a torrent of alleged violations by Mr. Meese of the Ethics in Government Act. These accusations have to do mainly with home mortgages, federal job recommendations, a $15,000 loan and a stock investment by Ursula Meese that lost $3,000. The whole matter is in the hands of the by-now familiar special prosecutor.

So it came to light last week that Sen. Metzenbaum himself creamed a $250,000 finder's fee out of a $30 million hotel deal last year by putting the seller and buyer in touch with each other. The senator says he didn't break the rules of the Senate because he made the phone calls in the evening, and that he didn't break the D.C. real estate licensing laws because he made them from his home in Virginia. A fastidiously ethical mind would be careful about that sort of thing. Besides, says the senator, he has given the money back. Before turning to a broader consideration of the moral spider's web Washington has woven around itself, let it be recorded that in returning the money Sen. Metzenbaum added accrued interest of about $25,000, a grimly amusing irony to the Meeses of the world who find themselves twisting over a $15,000 principal.

At one exceedingly low level this makes for an amusing spectacle. But isn't there a point at which those of us in the political community have to do some hard thinking about the amount of productive time we're wasting on this kind of political garbage? Ethics? Come off it. There can't be five people in all the churches of Washington who go down on their knees at night in the belief that the greater good is being served by the unending prosecution of the two main legislative artifacts of post-Watergate morality—the Ethics in Government Act and the Federal Election Campaign Act.

These laws have lost any connection they might have had with ethics or clean politics. They're gravy for the lawyers. And for the politicians they're two pieces of heavy artillery, which any party or candidate can roll out to bomb the opposition.

Gary Hart's current assault on Walter Mondale's delegate committees—for violating "the spirit" of the campaign laws—is a perfect example. What precisely is this holy spirit that now animates our campaign laws? In point of fact, the campaign spending act is now such a huge, convoluted tangle that the thing has become a laughingstock among political professionals. A lawyer reviewing a *two-volume* explication of the act referred to the lawyers now hired by politicians like Messrs. Hart and Mondale as "election law rabbis."

The details of the Ethics in Government Act go on and on with a mind-boggling list of disclosure requirements and specifically forbidden acts. You must report the "source and brief description or estimated value of any gift or reimbursement which is not received totally independent of the spouse's relationship to the reporting individual and certain assets, liabilities and transactions of the spouse, unless the reporting individual certified that he or she had no control over them. . . ." These are the laws of a great nation?

The problem is this: We have formalized into explicit law areas of public and political life that are more effectively controlled by informal politics or less constricting legislation. It's now obvious that the informal procedures produced a healthier political climate. Back then, the press could be expected to learn of and report alleged breaches of political ethics by elected or appointed officials. Such stories rose or fell on their own weight. Watergate stayed afloat, and its principals are largely out of public life.

The "jury" in this informal system is the electorate, which balances the accusation against an official's usefulness and passes judgment in the voting booth. Why did the sponsors of the ethics act think our politics would be better served or improved if mostly trivial affairs were dragged out through the public minutiae of the legal system? Under these laws the issue often becomes, as it has in the $15,000 Meese loan, not whether the behavior was improper but whether the bureaucratic forms were filled out properly.

These laws also put the press in an odd bind. They have turned us into law clerks. Politicians and their staffs may be inwardly laughing like madmen as they use the ethics and campaign laws to pontificate about the alleged improprieties of Messrs. Meese, Lenkowsky or Mondale. And the press, with no easy way to report motive, must restrict itself to detailed citations of the laws. We may not be serving our readers the whole story. Worse, we're probably boring them.

We're all for ethics. Who isn't. But the campaign reform law and the Ethics in Government Act aren't about ethics. They're about politics at best and political hypocrisy most of the time.

REVIEW & OUTLOOK

WALL STREET JOURNAL
03 JAN 1985

Common Cause vs. Common Law

Just in time for today's return of Congress to Washington, the angels at Common Cause are enjoying one last dance on the pinpricked hide of Edwin Meese. Chairman and head ethicist Archibald Cox recently issued a 37-page report urging that everyone ignore last September's 385-page investigator's report exonerating Mr. Meese.

Not to worry that independent counsel Jacob Stein and five deputy counsel interviewed 200 witnesses, and a grand jury questioned 45 witnesses, and both read libraries full of documents. They cleared Mr. Meese of all allegations of criminal improprieties.

Mr. Stein was careful to note that he could only consider the criminal charges, and wasn't empowered to report the "propriety or the ethics" of Mr. Meese's conduct. But obviously ethical judgments depend, or should depend, on the facts, which Mr. Stein found weren't there. Yet Common Cause harps on some of the same charges, which include failure to report a pair of cuff links given by South Korea, a loan to Mrs. Meese by someone who later got a government job, and an extension on the Meese house mortgage.

The Stein report said there was nothing up Mr. Meese's sleeve on the cuff-link case, or when it came to the friend who made loans to Mrs. Meese and then got a government job "without the knowledge of (or any intervention by) Mr. Meese," or when the Meese mortgage was extended instead of foreclosed, which was "sound from a business point of view." It's not as if he was accused of breaking campaign finance laws or using a widow's trust fund for Meese family purposes.

What's really going on here is what's been going on ever since William French Smith resigned. Some people simply don't want an attorney general with the conservative views of Mr. Meese. Many of these apparently pay dues to Common Cause. Mr. Cox didn't let the Stein report facts get in his way. Even before the report was assigned, Mr. Cox was convinced that Mr. Meese violated "ethical mandates," and last spring sent a letter to all the senators saying so. So far, the anti-Meese lobby has managed to keep the attorney general's office vacant for almost a year, leaving in limbo some important programs of the Reagan mandate. Finally, Senate Majority Leader Bob Dole now says, "We've held Ed Meese hostage long enough."

One overdue reform for Attorney General Meese would be to end the Legal Services Corp., the American lawyers' version of UNESCO. The program was supposed to help the poor enforce their rights, but has been hijacked by social-engineering lawyers whose fascination is with redistributionist politics, not with the interests of individual poor people. Mr. Meese may also have some ideas for reducing the amount of litigation this country suffers, which accounts for a whopping 2% of GNP, more than steel.

The Senate Judiciary Committee hearings to confirm Mr. Meese are rescheduled for later this month. He is perfectly qualified for the job, as he was before the independent counsel's report, much personal torment, and a year ago.

Indeed, judging by the damage groups such as Common Cause would wreak on cherished legal principles, it strikes us that it may be important to have a chief law-enforcement officer with a victim's firsthand knowledge of the fragile nature of the rule of law. Consider this Common Cause argument. Despite the factual findings of the Stein report, the group only required its collective judgment to conclude that Mr. Meese lacks "ethical sensitivity," and so must never be attorney general. Each page from Mr. Cox must have the strength of 10 pages from the independent report because Common Cause hearts are so pure.

Consider what Common Cause would have us adopt as a new standard of proof. For example, the Cox report acknowledges the Stein finding that there was no link between the loan and the job, but concludes, "whatever his subjective motive, Mr. Meese did link by his actions" the loan and the job. "Subjective motive?" Common Cause is apparently relying on an "objective motive," an idea only a studied Marxist could understand. Since no evidence is offered to suggest any action by Mr. Meese to support a link between the loan and the job, this pathbreaking legal standard requires no proof.

The gist of the Common Cause argument makes a hash of the very concepts of guilt and innocence: Even though Mr. Meese did nothing criminal, there were allegations of criminal behavior, and the *existence of allegations* is fatal to Mr. Meese. In Mr. Cox's estimation, the controversy surrounding Mr. Meese means he can no longer "symbolize the highest standards of honor, integrity and freedom from self-interest." Mr. Cox and Common Cause of course were sources of many of these allegations in the first place. So political enemies can be quashed in three easy steps: Raise accusations, damage reputations, ignore vindications.

Neat.

But this procedure turns the major principle of common law inside out. The accepted idea has been that people are considered innocent until proved guilty. The suggested reform from Common Cause, as applied to Mr. Meese, is that he's guilty after being proved innocent. A more proper verdict would be a speedy confirmation as attorney general.

SACRAMENTO UNION

January 2, 1985

Second round for Meese

With a landslide re-election behind him, President Reagan is expected to have little difficulty in belatedly obtaining Senate acquiescence to his choice of Edwin Meese III as attorney general.

It should also help Mr. Meese and Mr. Reagan that Congress is — or should be — embarrassed by its clumsy whitewash of Democratic vice presidential candidate Geraldine A. Ferraro's financial disclosure problems.

Post-Ferraro partisan attacks on Mr. Meese's integrity — now that he has been cleared of criminal suspicion by special prosecutor Jacob A. Stein — would not play well with the voting public that so overwhelmingly expressed its confidence in Mr. Reagan.

Mr. Stein thoroughly investigated Mr. Meese's personal finances, his controversial promotion in the Army Reserve, and insinuations that he helped to get federal jobs for people who helped him financially.

Some members of the Senate Judiciary Committee — which must confirm Mr. Meese as attorney general — and others in Congress had a field day grilling Mr. Meese during his initial round of confirmation hearings last year.

Some Democratic senators obviously found the presidential counselor a tempting surrogate target for his Republican boss in a crucial election year.

Now that the presidential election is over, the Senate Democrats presumbably won't have much incentive to keep up the attacks on Mr. Meese.

Those who have followed Mr. Meese's governmental career in California and Washington are convinced that he is honest.

This, of course, doesn't excuse Mr. Meese from the charge that he was careless in keeping his financial affairs — including an interest-free loan of $15,000 to his wife that he failed to disclose as the law requires — straight and above suspicion.

We are confident that Mr. Meese will lay to rest any lingering doubts about his suitability to serve as attorney general.

When Round 2 of his confirmation hearings begin, Mr. Meese should be on his way toward restoring his reputation, that was tainted by nothing worse than occasionally poor judgment and excessively partisan attacks.

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OCT. 1984

Ed Meese Cleared And Ready

Copley Editorial Service

President Reagan's announced intention to have Edwin Meese, his White House counselor, serve as the next U.S. attorney general got a big boost recently.

Meese was officially cleared of possible criminal charges having to do with his financial affairs and possible violations of bribery statutes. Specifically, he was found innocent of allegations that he helped to get federal jobs for individuals who had lent his family money or helped him sell his La Mesa, Calif., home.

This vindication came in the form of a 385-page report. The findings summarize an exhaustive five-month investigation by Jacob A. Stein, who was appointed last April by a three-judge federal court as a counsel independent of the Justice Department to determine Meese's culpability.

Stein, one of the country's most respected attorneys, was assisted by five deputy counsels, including three former government prosecutors, and four FBI agents.

There were 11 separate inquiries of possible wrongdoing, some of which were niggling. One, for example, had to do with Meese's retention of cuff links given to him by the government of South Korea.

The most serious inquiry and the center of the investigation concerned Meese's failure to list a $15,000 loan to his wife on federal disclosure forms. The exonerating verdict on this is clear enough: "... we find no indication of any underlying improper or illegal conduct on the part of the Meeses and no evidence that they had knowledge of any such conduct by anyone else." Stein did cite Meese's "general lack of attention to the forms ..."

As for the charge that Meese helped his friends obtain federal jobs in return for personal favors, Stein found in every instance that the individuals were so well acquainted either with the president himself or with other top officials in the administration that "... none of them needed Mr. Meese's support and influence to obtain federal jobs ..."

So much for the criminal aspect. But what about ethics and judgment? Appropriately, Stein resisted pressure from both friends and foes of Meese to express an opinion on the moral aspects and confined his report to the strictly legal. Thus, these subjective considerations remain as a factor in the confirmation proceedings after the November election, assuming Mr. Reagan's victory. Senators from both parties predict, however, that the president will be given the attorney general he has pledged anew to nominate.

Indeed, Sen. Edward M. Kennedy, apparently reflecting the views of other Judiciary Committee Democrats, has said, "the questions examined and resolved by the special counsel should no longer be part of the confirmation process." Instead, he promised to question Meese about his "sensitivity to issues of civil rights and civil liberties." Such partisan and philosophical dickering will not likely amount to much.

The real question now is this: What can we expect from Meese as the nation's top law-enforcement official? Putting aside his advocacy of law and order since his days as deputy district attorney in California's Alameda County during the early 1960s, we find a thoughtful answer from a prominent and qualified Democrat: Lloyd N. Cutler, a lawyer and counsel to President Jimmy Carter, wrote not long ago that Meese's academic and professional records "... may not be up to the standards of distinction set by Nicholas Katzenbach and Edward H. Levi, but he compares favorably with most of our attorneys general ..."

Those who know Ed Meese are confident he could surpass Cutler's fair, if clinical, judgment.

Philosophy Behind Meese Mess An AP News Analysis By MIKE FEINSILBER

WASHINGTON (AP) _ From one viewpoint, the fight over the fitness of Edwin Meese III to serve as attorney general was over his ethics. But that was only part of the story. Much of the opposition facing Meese was based on his political philosophy rather than his ethics.

The long, painful, expensive fight over Meese's nomination illustrates a point about the way Washington works.

These occasional confirmation battles _ always distasteful because a person's reputation is at stake _ are almost always over a hidden question.

Usually the battle grounds are the nominee's ethics while what's really at issue is his philosophy.

In Meese's case, special prosecutor Jacob A. Stein absolved Meese of criminal wrongdoing last week in the culmination of a five-month grand jury investigation.

The fight wasn't over a $15,000 interest-free loan from a long-time California friend who ended up on the federal payroll. Nor was it over Meese's forgetfulness in neglecting to list some stock transactions on his financial disclosure forms, or his hasty promotion in the Army Reserve, or his failure to turn over to the government a $375 pair of jade and gold cuff links given him by the South Korean government.

Meese's ideological foes in the Senate raised those issues in an attempt to keep him from becoming head of the Justice Department because they don't like his ideas, not because they cared what he did with a pair of cuff links.

Meese's critics don't like his conservative political philosophy, his feelings toward the poor, his attempts to weaken or abolish the Legal Services Corporation, his attempt to restore tax-exempt status to Bob Jones University despite its record of discrimination on the basis of race, his opposition to the Equal Rights Amendment and what one witness at Senate hearings called "the Administration's insensitivity, unfairness and indifference to women, minorities, the disabled and many other victims of discrimination."

The witness, Ralph Neas, testifying on behalf the Leadership Conference on Civil Rights, told the Senate Judiciary Committee last Feb. 2, "Bluntly put, we oppose the nomination because, on the basis of our observations over the past three years, we do not believe Ed Meese, as the nation's chief law enforcement officer, would enforce, vigorously and objectively, our nation's civil rights laws."

That sort of argument doesn't get very far, and the Meese nomination was headed for the Senate floor, and probable confirmation, when the personal financial questions that caused the appointment of a special prosecutor arose.

EDITOR'S NOTE: Mike Feinsilber, an AP reporter in Washington, has covered the fight over the nomination of Edwin Meese III and other confirmation battles.

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VINDICATION FOR EDWIN MEESE III

When there were stories day after day on the charges made against White House Counselor Edwin Meese III during Senate hearings on his suitability to serve as U.S. Attorney General, the constant repetition had the effect of virtually convicting Meese without a trial.

The inquisitors of Meese, led by Sen. Howard M. Metzenbaum, D-Ohio, hounded him with a succession of allegations that seemed to indicate Meese had accepted financial favors in exchange for helping a number of his friends get cushy government jobs.

Democratic foes of Meese even went so far as to invent a term,"the Sleaze Factor," which they claimed applied to the Reagan administration as well as to Meese.

Meese's detractors were so convinced of his guilt they called on him to ask President Reagan to withdraw his nomination because they were sure he had committed serious, possibly criminal offenses.

Meese finally had all he could take of this guilt-by-accusation strategy and asked for an independent investigation of the charges that Metzenbaum and Company arrayed against him.

Now, after an exhaustive investigation by an independent counsel, Jacob A. Stein, the latter says the five-month probe found "no basis" for bringing criminal charges against Meese on 11 allegations made against him.

This 378-page report should silence a lot of the irresponsible charges and innuendos that political opponents of Meese and President Reagan have continued to make against Meese. The Sleaze is on the other foot. Those who jumped so quickly to conclude that Edwin Meese had broken the law in a number of financial dealings must now be feeling pretty sleazy, and deservedly so.

It is not surprising that Senator Metzenbaum is still talking about "inconsistencies" between what Stein reported and testimony heard before the committee, or that Metzenbaum has called anew for Meese to ask Reagan to withdraw the nomination. There probably is nothing on earth that could persuade Metzenbaum to drop his vendetta gainst Meese. Fortunately, if the present trend in the presidential race holds up, the influence of the noted real estate broker from Ohio will be further diminished after Nov. 6.

The lesson here is that it is always wrong to attempt to convict someone before he has had a fair hearing on the charges made against him. The overzealous pursuers of Mr. Meese weren't just out to defeat his nomination, they intended to destroy his effectiveness in the White House, and to then use the demise of Meese to batter the administration as well. The exoneration of Meese of any illegal behavior has foiled this plan. It should serve as a caution flag for some in Congress and in the media who have been inclined to conclude that any behavior that appears suspicious is, ipso facto, criminal behavior.

NEW REPUBLIC, AUG. 27, 1984

Burning the scandal at both ends.

MEESE MESS

SCANDALS MAKE good copy and sometimes make journalistic careers, but do they make for good government? The case of Ed Meese shows the press in a less than flattering light, diligently hunting down all the leads that might show malfeasance in high places but often exaggerating the significance of what has been discovered, and leaving one in the end with the disturbing thought that the whole "affair" will prove to be one more blow to reasonableness.

My favorite contemporary author, the Swiss Friedrich Durrenmatt, provided the best perspective on scandal in his novel *Traps*, later a Broadway play entitled *The Deadly Game*. The theme, as in all his works, was justice: What is guilt, and who can judge it? In *Traps*, a nondescript person wanders through a winter blizzard into a chalet to find three old men having their monthly dinner together: a retired judge, a retired prosecutor, and a retired defense attorney. The three try the greatest cases of history, but, as one of them explains to Traps, it's more fun with a real person, and they ask if he will stand trial in exchange for food and drink. He agrees, but when his attorney suggests he plead guilty to a minor charge ("everyone has done something wrong, after all"), Traps insists that he has lived an exemplary life and claims innocence. In the end, the prosecutor finds that Traps, having discovered his wife involved in an affair with his boss, arranges for the man—who has a heart condition—to undergo a shock, which kills him. "You knew he would die," the prosecutor proclaims enthusiastically. "Yes," says Traps, who is promptly sentenced to death by the judge. Taking matters into his own hands, Traps hangs himself, and when the three old men—now happily drunk—find his body, they lament, "Traps, Traps, why did you do that? You have ruined the most wonderful evening we ever had."

As Durrenmatt realized, no one's life can withstand intense scrutiny. We have all done something we regret, or failed to do something we should have done, and a canny prosecutor in a courtroom or in the media can eventually ask enough damaging questions to make us look bad. In practice, once the life of a public figure comes under the microscope, he is in trouble. One hopes that the issue is one of degree, and that we are entitled to be judged by standards of reasonableness. Are our sins grave or only the usual ones?

In the Meese affair, the protagonist's major malfeasance seems to have been that he borrowed money. His other alleged sins, for the most part, are those that define the political process and the spoils system: he got people he knew appointed to jobs; he rewarded party loyalists and Reagan supporters; he did his best to rally public and Congressional backing for his President's programs.

Yet even though there is virtually unanimous testimony from those who know him best that Meese is an honest and scrupulous man, the media have investigated his activities without the kind of fairness we so badly need to keep society civil. THE NEW REPUBLIC, for one, used a nasty cover headline—SLEAZY ED MEESE—to highlight a TRB column about the case (TNR, April 2). Consider two other examples. The first came on April 4, when Ronald J. Ostrow of the *Los Angeles Times* wrote a story (picked up by *The Washington Post*) with this lead paragraph:

> Clarence M. Pendleton Jr., chairman of the U.S. Commission on Civil Rights, won appointment to his federal job while serving on the board of Great American Federal Savings & Loan Association, the San Diego institution that allowed Attorney General-designate Edwin Meese III to fall fifteen months behind on his mortgage payments.

After noting that Pendleton was the third former offical of the S&L to get a job in the Reagan Administration, Ostrow leveled his charge against Meese in the form of a question: "In an interview, Pendleton said he had no knowledge of Meese's mortgage debt . . . or of Great American's apparently unusually tolerant attitude. . . ." The insinuation here is that the bank let Meese off easy because the bank's officials wanted (and got) jobs in Washington, or, alternatively, that bank officials helped Meese and he rewarded them later on by getting them Washington jobs.

Meese and Pendleton were old friends, Pendleton having served on the board of the San Diego Coalition for Economic and Environmental Balance—co-founded by Meese—in the late 1970s. Thus Pendleton was already in the basic pool of people from whom the Reagan Administration chose many of its officials. Furthermore, as Ostrow's own information demonstrates, the dates of Pendleton's association with the bank don't support the suggestion that he was instrumental in the Meese loans. Pendleton came to the bank in January 1981 (by which time the Meeses were trying to sell their house) and left in November. Ostrow himself observes that Meese's mortgage debt ". . . climbed to $423,000 in April, 1982," by which time Pendleton had been gone for five months and was hardly in a position to influence anything. In any event, the bank's willingness to let Meese delay payments until the house was sold is hardly surprising: California real estate is not a bad risk. Meese was gainfully employed, and his future earning prospects were excellent. Meese says that he didn't even know Pendleton was on the board, and nothing in print suggests the contrary.

HAD THE media been of a fairer turn of mind, they might have reported that the stories of Meese and his California home reflected the man's real condition: Meese had to borrow money, tried to sell his house during a tough time for the real estate market, and got some help during that period from—imagine!—his friends.

The other main sin of which Meese has been accused is more interesting, because it is related to the post-Watergate effort to eliminate venality from government. As usual, the procedures were designed by the lawyers, who created

8/27/84

complicated forms for government officials to fill out. It was Meese's failure to completely fill out one of these forms that led to one of the most outrageous headlines in the whole affair, in the *The Washington Post* on April 6: MEESE LED TO LIST PAID TRIPS. The clear suggestion of the headline—and much of the story—was that Meese was cheating; in fact he had run afoul of some tough paperwork. The new ethics laws require you to report almost everything you do and have done, including everything you own, all jobs you have ever held, any company with which you have had a relationship, any board on which you have sat, and so on. I know of one older government official who has done a lot in his life who had to pay a lawyer and an accountant for thirty days' work in order to fill out the forms in full.

THE ORDEAL by form does not end there, however, for if you travel while a government official, you have to report that, too, and it is very difficult to deduce from the laws *how* to report it all. If a group asks you to speak and offers to pay for the cost of your travel and lodging, there are two possibilities: you can pay the expenses and ask for reimbursement, or you can ask for the tickets, the hotel bills, and the meals to be paid directly for you. If I have understood the requirements properly, the first case is termed "reimbursement" and goes on one form, while the second is a "gift" and goes on a different form. Moreover, the government's lawyers were in a quandary for the first couple of years about how to report all these things, d even about *whether* they all had to be reported.

This aspect of the Meese story offered the media the chance to look into the Ethics in Government Act and ask some intelligent questions about it, but to my knowledge no publication or network did so. Yet as John H. Gross, who investigated the Carter family business for the Justice Department in 1979, wrote in the *New York Law Journal* back in January 1982:

> . . . the Act does not effectively deal with the problem it was intended to address. In fact, its chief effect has been to deflect public inquiry from genuine improprieties of those in high office and focus public interest instead on errors which those officials commit in preparing their disclosure reports.
>
> This is essentially a misplaced focus because most such errors are nothing more than honest mistakes. Not only do the Act and its regulations call for elaborate detail, but they do so in a terribly confusing manner. . . . A government official without specialized training in the requirements of the Act is likely to be mystified by the task before him. Mistakes are almost unavoidable.
>
> Such mistakes seem to hold an interest for "public interest" groups and the media well beyond their intrinsic importance. . . .

Meese didn't want to spend the money on a lawyer, and filled out the forms himself. On one occasion he omitted a $15,000 loan to his wife from a California friend who later t a government job (he had declared the loan on other forms), and this got him into hot water. Just as John Gross had predicted, an innocent error became characterized as malfeasance.

In *Traps*, the old men's game becomes deadly because Traps makes a claim of absolute innocence that cannot possibly stand close investigation, and he forgets that he is involved in a game and acts as if his mock trial and sentencing were real. The judge and the attorneys were shocked to see the effect of their amusement, for they had believed it was all a game. I sometimes think the media behave in the same way, and one of the tip-offs is the fact that almost without exception the major media have termed Jacob Stein the "special prosecutor" in the case. His actual title is "independent counsel" and the title was changed from "special prosecutor" in 1982 precisely because Congress decided that the latter was too prejudicial. Yet among leading publications only *The Wall Street Journal* has used the correct label with any frequency.

The Meese affair has produced hundreds of pages of articles and hours of broadcast time. This is disproportional to the significance of Meese's actions. It hurts Meese, an honest and capable official, and it makes it more difficult to recruit other good people for similar positions. In fact, for a day at the Democratic convention, some journalists noted that Geraldine Ferraro had not listed her husband's business activities on her disclosure form, and there was a brief flurry of investigative activity. Happily, it quieted down, but we shall soon witness her second ordeal by form. If we continue to subject our public officials to such unfair examinations, we shall end up with either inexperienced novitiates or experienced crooks in high office.

The government and the media must reach a reasonable compromise, whereby the media continue to scrutinize the activities of government officials but a sense of balance about improprieties is observed. The alternative is for political life to grow less and less civil.

MICHAEL LEDEEN

Michael Ledeen is Senior Fellow at the Georgetown University Center for Strategic and International Studies.

The Burger Court's right-hand man.

WHITE'S FLIGHT

ON THE DAY after Independence Day the Supreme Court closed a term during which civil liberties took a worse shellacking than in any other year since Warren Burger became Chief Justice. Head-shaking observers claimed that the "Burger Court" or the "Nixon-Reagan Court" was finally showing its true colors. Court-watchers have been insisting for years that the liberal legacy of the Warren Court has been left surprisingly untouched, and that the Nixon, Ford, and Reagan appointees have caused

Cannibalism capital-style

ARAM BAKSHIAN

02 APR 1984
WASHINGTON TIMES

Attention, readers: Can you name this tune?

"This is a hell of a job! I have no trouble with my enemies. I can take care of them all right. But my damn friends, they're the ones that keep me walking the floor nights!"

Wrong again. It's not a quote from Ronald Reagan's diary. This conversational fragment was uttered by President Warren Gamaliel Harding to journalist William Allen White, some 60 years ago.

One wonders, though, whether some similar thought — neatly shorn of the expletives, of course — doesn't occasionally echo in the sound chambers of the current First Executive Cranium. Especially just now, while Edwin Meese, one of the president's closest confidants and his nominee for attorney general, has become an inadvertent means of raising doubts about the ethical practices of the Reagan administration.

Fritz Mondale, the candidate of compassion and the open mind, has already tried Mr. Meese and found him guilty of being part of, in Mr. Mondale's own delicate words, the Reagan "sleaze factor." My question, and perhaps I should use a Mondalian frame of reference, is,

"Where's the sleaze?"

Until and unless the investigation of the newly appointed special prosecutor uncovers any real illegalities or improprieties on the part of Mr. Meese, it ill becomes Mr. Mondale and the rest of the pack yapping at his heels to pass judgment on one of the more decent, dedicated people to come to Washington and the executive branch in recent years.

Let me confess that I am not a neutral spectator in this tawdry political melodrama. I knew, worked with — and occasionally disagreed with — Ed Meese in the Reagan White House for several years. When you gain insight into and respect for a person's character on the basis of close contact, you may be better qualified to pass judgment on their conduct and character than someone who is trying to use them as a political punching bag — but you are not an unbiased juror.

So, having admitted that extensive exposure to Ed Meese left me with the highest opinion of him as a man of honor and a public servant of integrity, let me confine myself to some of the factual details of the "case" that is being mounted against him by Sen. Howard Metzenbaum, D-Ohio, and other partisan politicians trying to inflict damage on Ronald Reagan in what just happens to be an election year.

Sen. Metzenbaum

By the way, a close look at Mr. Metzenbaum's own colorful rise to riches as a Midwest parking lot millionaire, and his exceedingly cordial relations with trade union bosses might prove most informative as an example of how to get rich quick and then be elected to the Senate. One hopes that somewhere, even now, a dedicated sociologist — or an employee of Jack Anderson — is compiling the full story so that it will not be lost to future generations wishing to emulate it.

As for the Ed Meese case, herewith a few facts that have been lost in the blizzard of innuendo. On the basis of all the evidence and accusations made to date:

1. Mr. Meese never proposed any full- or part-time federal job for any person (or their relatives) to whom he or his wife were ever indebted.

2. He never proposed any federal full- or part-time job to anyone who assisted, financially or otherwise, in the sale of his San Diego home.

3. His debts never exceeded his assets.

4. All of his debts have been paid, along with all interest due.

5. He made no effort to receive special treatment for promotion in the Army Reserve.

6. Out of four annual financial filings, each requiring scores of complex entries, he forgot to list only three items, one of which may not have been required in any event. All omissions have been corrected.

7. There is no inconsistency in any of his statements, sworn or unsworn, about Carter materials, or statements he made about other routine unclassified Carter campaign materials having nothing to do with the debates.

It may well be that, thanks to a media blitz and the cheap shots of Messrs. Metzenbaum, Mondale, and crew, Mr. Meese may never become attorney general. Ted Stevens, the Republican Senate Whip, has said that, if he were Ed Meese, he'd wait to be exonerated by the special prosecutor and then tell them what to do with the job. I suspect that's what many of us would do in a similar case.

Mr. Meese may also conclude that he has, fairly or unfairly, become a political liability to his old friend, the president. But if he has — and if he goes — it will be much more of a tribute to cynical political cannibalism Washington-style than to anything remotely resembling justice.

Where's the decency?

30 MAR 1984
wP

Washington
Post

The Meese Nomination

Kenneth Adelman, a previous Reagan nominee whose nomination was bitterly contested, urges the president's choice for attorney general to stick it out. Alan Morrison argues that we need an attorney general now.

Kenneth Adelman

Hang Tough, Ed

Dear Ed:

It's a tough thing you're going through. Confirmation battles have become like an annual springtime rite of passage. You are no doubt pondering exactly how you got into this situation and planning how to get it resolved. Then you may be able to appreciate what Virgil wrote in 23 B.C.: "Perhaps someday it will be pleasant to remember even this."

I learned some lessons at the same time last year:

1. The controversy transcends the nominee. Advocates of a political cause think they have to personalize their issue to be effective. The issue precedes the confirmation battle and will persist afterward. In your case, they are trying to dramatize what they see as a "liberal" versus "conservative" issue. They are trying to use you to advance the idea that the Reagan administration cares more about its own advantage than about the disadvantaged. While the words and investigation concentrate on the nominee, the controversy is fueled by emotion on the issue, quite apart from your fate. Precise answers to charges made are necessary but not sufficient; they deal with the facts rather than the passion. I was extensively queried on South Africa, traits of a successful president, African art acquisitions, and sundry other topics which do not, shall I say, now cross my desk. You try not to take it personally, but that's impossible.

2. Senators on the march seem spirited, relentless, pointed; those on the defense seem hesitant, sporadic and diffused. What seems is often what is. Those on the attack seek to mobilize troops by transforming the issue into a highly symbolic skirmish over the confirmation. They use overstatement, high drama and vigorous reconnaissance missions—not all that much different from what was once called a witch hunt.

In such circumstances, even the most meager tidbit is often heralded as an exceptional scoop. Only a rare senator or commentator breaks from the chase to suggest that justice for the nation—the Senate's constitutional obligation to pass a sound judgment on a nomination—has to be somehow balanced by justice for that individual. Public servants have a right to avoid having their reputations besmirched by "revelations" of silly mistakes, which become of consequence only because they appear at a particular intense moment. Clement Haynsworth, Walter Hickel, Theodore Sorensen, William Clark and other decent and capable men—from different administrations—were treated roughly and seriously bruised in and by the confirmation process.

At risk is a nominee's reputation. That is most valuable. At risk, just as vital, is the willingness of persons out of government ever to serve and thereby unavoidably enter the fray.

3. Each new revelation, no matter how dinky, arouses more and more committee members and, in confirmation battles, the senators have the power. Most of the time most senators feel themselves less powerful than people in the executive branch—the opposite of what most in the executive feel—but not in this case. Here, everyone agrees that the nominee is almost wholly in the committee's, then the Senate's, hands. In fact, in what constitutes the quintessence of John C. Calhoun's concept of government by concurrent majority, a willful handful of senators can halt a critical action—the appointment of the president's person to implement his policies.

It's not surprising that the United States is the only country with such a confirmation process, or that the provision was put together in a compromise during the final weeks of the Constitutional Convention. Still, the process is there to be used, not abused.

4. Time is a big problem and a big frustration. A nominee naturally yearns to move into the new job to tackle the challenges. The delays seem unending. They increase the opportunities for hyping otherwise insignificant material; the opposition needs that to keep the tale alive. Delays are oftentimes tailored to drive the nominee or the president to yield. Hang tough, Ed.

5. Some members of the press quickly become participants rather than observers. The opposition on the Hill feeds material to reporters friendly to them; supporters do likewise to try to achieve a semblance of news balance. As is too frequently the case with the rush of deadlines and lack of in-depth knowledge, some reporters are propelled to print material furnished by sources without independent substantiation.

Above all media, television news reigns supreme. As a form of theater, it thrives on passion and controversy. Do not expect a fair exposition of the facts. But what television news brings forward, from among a multitude of factors, will be what makes the Senate cloakroom and other "talk of the town." That's terribly important.

6. Despite all this, final votes are cast largely by what the senators think of the nominee as a person—how decent, how truthful, how qualified, how interested in the public good rather than in private gain. This is in your favor, Ed. Senators are, by and large, keen at gaining a sense of the person. After all, they are at the top, which demands agility at sizing up people. Integrity becomes the supreme consideration, as is proper for the process, for the nominee, and for the country. As long as the nominee conducts himself then, as before, with decency and integrity, it shines through.

Until that final resolution, an abundance of frustration, creeping doubt and emotional tearing are the lot of the nominee and the nominee's family. All want to cry out: "This just isn't fair." That's only human, and it's also true.

The unfairness grinds away at the collective enthusiasm for the new position. "Is it worth it?" During a confirmation ordeal, that question can be difficult. But the enthusiasm springs back the instant you are sworn in and begin tackling the new challenges.

Strangely enough, it is somehow consoling to grasp that after all this furor, in short order Washington will move along to a new Major Issue, which, in turn, will soon be overshadowed, continuing the endless march of Major Issues and Big Controversies in Washington—many furnishing little meaning beyond the Potomac, much less any historical legacy.

Not fleeting, but enduring is the maxim of Abba Eban: "Politics is not for the faint-hearted."

The writer is director of the Arms Control and Disarmament Agency.

0 2 APR 1984

WASHINGTON POST

R. Emmett Tyrrell Jr.

Our Anemic Scandals

Apparently the first obligation of every White House appointee and nominee is to serve as raw material for the American soap opera industry, particularly that annex of the industry that has arrogated the term journalism.

In the Carter administration Tim Kraft, Ham Jordan, and Bert Lance dutifully served this high purpose. Even the president is expected to serve, as Jimmy Carter learned when the reporters called him onto the carpet to explain the dark intricacies of the sale of his fabulous peanut warehouse.

Now it is the Reagan administration's appointees who are learning their roles in our national morality pageants, and for three years various ill-starred eminentoes have been duly responding to the lurid charges lodged by suspicious journalists and congressional investigating committees.

Only one Reagan appointee has been convicted of any crime whatever. Yet the Democrats now speak portentously of the Republicans' "moral character," and recently in Iowa Gary Hart adjudged the administration's ethics as unparalleled throughout the long, sordid history of the republic.

This creation of melodrama where theretofore only dull government toil was spied is a fascinating process. Ominous stories appear in the press. A barrage of inquiries from the journalists falls upon the fated appointee. Overnight the head of the National Security Council, the head of the Central Intelligence Agency, the secretary of the Navy and all manner of smaller fish are turned from their governmental tasks and obliged to provide us with thrills on the evening news and opportunities for Pulitzer Prizes.

> *"This creation of melodrama where theretofore only dull government toil was spied is a fascinating process."*

"Since Ronald Reagan took office," an inflamed New York Times reporter revealed last week, "more than a dozen high-level officials have resigned, been investigated or been forced to explain their actions after charges of impropriety."

"Forced to explain their actions." What pale representation of scandal is this? Moreover what kind of ethical issue is it?

Well, for the credulous it is a scandal to curl the hair; and for the Democrats, whose policies and presidential contenders are so thunderously unfetching, it is an issue on the order of "Fifty-four Forty or Fight."

Currently in our nation's capital we have two more appointees jumping through the journalists' hoops and otherwise being sweated by the news industry at taxpayers' expense. They are the sinister Edwin Meese, President Reagan's nominee for attorney general, and Leslie Lenkowsky, a Democrat whose appointment as deputy director of the United States Information Agency was a shoo-in until it was discovered that someone somewhere at the USIA had compiled a list of speakers to be barred from USIA trips.

Did Lenkowsky know about this Procrustean tool of Reaganite totalitarianism? If he cannot prove his ignorance, back to New York he, his wife and two children will be sent, and under a very dark cloud.

Of these two scoundrels, Meese is providing the greater melodrama. His imbroglio involves money, cuff links, and the mysterious Carter briefing papers. Lenkowsky's is merely a question of whether he knew about the infamous list (now reported to be a bureaucratic record of the 96 or so speakers rejected by political appointees out of the 5,600 accepted over 2½ years).

Lenkowsky says he abolished the list when he heard of it, which is perfectly plausible. He is a lifelong Democrat, and Democrats are politically savvy enough to know intuitively whom to invite to represent them. Republicans are comparatively quite ignorant. They need lists.

There are two lessons to be learned here. The first is for the White House. If it wishes to avoid future inbroglios such as the Meese grilling, do not appoint middle-class salary-earners. Appoint the really rich who can afford to lose money in their moves to Washington, and fire those in the White House who allow such puny scandals to grow vast and blood-curdling.

I suggest that former Treasury secretary William Simon be brought in. He is as rich as Croesus, and he makes it all himself. Not only that, he is Reaganite to the core.

The second lesson is for those who create these melodramas. In fine, these scandals are an embarrassment to America. We should have scandals as great as America is great. Each administration should have to appoint a few certifiable grafters to positions of public trust. Anyone familiar with urban politics knows where to find likely candidates.

23 JAN 1985
WASHINGTON POST

Paying Mr. Meese's Lawyers

HOW DO YOU feel about being presented with a bill for $700,000 by Edwin Meese's lawyers? As a taxpayer, you may share in this assessment just as you already pay legal fees for thousands of other individuals and groups who win suits against the federal government. In cases involving civil rights violations, for example, where employees prove discrimination because of race, sex or age, or when individuals are harmed by public officials, courts often award attorneys' fees to successful plaintiffs. Federal law provides for this payment in order to encourage citizens to vindicate their rights in court even if they cannot afford the often burdensome legal expenses involved.

Since 1983, courts have also been authorized to reimburse the legal expenses of public officials who have been cleared of criminal wrongdoing after investigation by a special prosecutor. The new law—a good one—is a direct result of an investigation involving President Carter's chief of staff, Hamilton Jordan, who was vindicated but left with legal bills of more than $67,000.

Mr. Meese is the first individual to qualify for reimbursement under the new law, and he is entitled to it since a special prosecutor found no grounds for criminal prosecution in an assortment of charges that had been leveled against him. But is the amount requested fair? The record is still sealed, but sources indicate that his attorneys have billed him at their customary rate, and it is high—as much as $225 an hour—but not unprecedented in large Washington firms. The lawyers were faced with a dilemma. If they gave Mr. Meese a reduced rate, as they might have done for another federal employee at his income level, they could have been accused of currying favor with a future attorney general, of giving a special break to Mr. Meese. But the Justice Department has a problem, too, because the administration has steadfastly opposed the award of attorneys' fees in excess of $75 an hour in other cases, though courts frequently award higher payments. Failure to object to the size of the fees requested in the Meese case would set a bad precedent in an area where the department is trying to keep a lid on costs.

The government spent only $320,000 in this investigation for the services of the independent counsel, five deputies and their administrative staffs. Private attorneys, of course, have overhead to pay and do not receive the same fringe benefits as government attorneys. But when the public eventually pays the bill, the fees won by private attorneys should not be wildly out of line with the government's own costs.

The Justice Department should file objections to the amount of this request, and the court should proceed to fix the fee. And the matter should be dealt with quickly—before Mr. Meese's confirmation hearings in the Senate begin. There is already enough to argue about in those hearings.

Record cleared

A107

An apology to Ed Meese

By James J. Kilpatrick

WASHINGTON — Back in March I wrote a column about Ed Meese. It hurt to write it. The President had nominated Meese to become attorney general, and the nomination had been caught in a fog of suspicion and innuendo. Meese was being perceived as a wheeler-dealer who peddled federal jobs in return for personal favors.

"Because perception counts so heavily," I said then, "my unhappy thought is that Meese ought to withdraw his name. ... Reagan has enough heavy baggage to carry into the coming campaign without the burden of a long and distasteful battle for (Meese's) confirmation."

I write today's column with a lighter heart. Meese now has won vindication — vindication in every way that a court-appointed independent counsel could provide it. An exhaustive review of 11 allegations of wrongdoing failed to turn up the slightest evidence against him.

With only a few days remaining before Congress adjourns on Friday, it is too late to resume confirmation hearings now; but if Reagan is re-elected in November, the Senate's first order of business in January should be the speedy rectification of the injury that has been done to an honorable man.

Jacob A. Stein was appointed independent counsel on April 2. My expectation — an expectation nurtured in Washington journalism — was that we were in for a summer of leaks. I could see The Washington Post's bloodhounds sniffing on the trail of Stein's investigators. It didn't work out that way. As it now transpires, there was nothing scandalous to leak. Moreover, Stein ran a tight ship. He gave no press conferences, and he kept his crew buttoned up: "We were successful in affording confidentiality concerning the appearance of witnesses."

By the time his investigation ended, Stein and his staff had interviewed more than 200 witnesses and had pored over thousands of pages of relevant material. No witness sought immunity. No witness took the Fifth. Under the ethics statute, Stein had no authority to consider matters of propriety, appearance or judgment on Meese's part. The question was whether Meese had violated federal law. And the upshot?

"We find no basis with respect to any of the 11 allegations for the bringing of a prosecution against Mr. Meese."

One of the more serious allegations last spring had to do with a $15,000 loan from Edwin W. Thomas to Meese's wife Ursula. Meese had failed to report the indebtedness on his Form 278; the loan carried no interest; Thomas had been named to head the San Francisco office of the General Services Administration; Mrs. Thomas had become an attorney-examiner with the Merit Systems Protection Board; their son Tad Thomas held a job for 10 months with the Labor Department. It looked bad.

Stein's meticulous investigation dissipates the cloud. The two families were quite close; the loan was a friendly accommodation intended to help Mrs. Meese in the timely purchase of a promising stock. (The stock, as it turned out, was a bummer.) Thomas got his GSA job on his own. There was no evidence "that Mr. Meese was involved in or was even aware of Mr. Thomas' appointment." As for Mrs. Thomas: "No evidence of Mr. Meese's participation in her hiring was found." As for Tad: "No evidence regarding Mr. Meese was discovered."

The same negative findings were made in the matter of Meese's real estate loans. After Reagan's victory in November 1980, it was imperative that Meese make a move to Washington in order to serve as the incoming President's chief counselor. The Meeses put their San Diego home on the market and simultaneously arranged to purchase a house in McLean, Va., a Washington suburb. The San Diego property remained unsold until September 1982. Much of the financing was through Great American First Savings Bank. Subsequently Gordon Luce, chairman of Great American's board, was appointed to a part-time position as alternate delegate to the U.N. General Assembly.

Stein's conclusion, after an exhaustive tracking of documents and testimony, is that there simply was no nexus between the bank's easygoing treatment of Meese and Luce's appointment to a largely honorary post. Luce was close to the President. If he had wanted a high-ranking job in Washington, he would not have needed Ed Meese to intercede for him. All other allegations faded away in the same fashion.

In the newspaper business, all this would add up to "no story." The media, regrettably, have treated the Stein report as such. The abbreviated coverage of Meese's vindication this month is in marked contrast to the voluminous reporting of the allegations against him last spring. This is how the system works: No story is no story. But it is pure pleasure for me to rejoice that Meese spurned my bad advice in March. He and the President stood fast, and they have come through with colors flying.

(James J. Kilpatrick's writings appear in numerous American newspapers and magazines.)

THE NEW YORK POST Monday, March 5, 1984

Ed Meese: right man for the job

The Senate Judiciary Committee's confirmation hearings on the nomination of Edwin Meese 3d to become the new U.S. Attorney General did not lay a glove on him.

For sheer election-year hypocrisy, however, they will take some beating.

For the millionaire Sen. Howard M. Metzenbaum (D-Ohio) to pursue Meese about the financing of his two homes on a White House salary was the worst kind of limousine liberal demagoguery.

For Sen. Joseph R. Biden Jr. (D-Del.), with Sen. Edward Kennedy sitting next to him, to fret about Meese's closeness to Reagan would be laughable if it were not so undiscerning.

What, pray was the late Robert Kennedy if not his brother Jack's most active political campaign manager and closest confidant?

Every President has a right to a trusted friend as attorney general. Eisenhower had his top political strategist Herbert Brownell, JFK had Bobby, Nixon had his law partner and campaign director John Mitchell, Carter had his boyhood friend Griffin Bell.

Yet a more persuasive message is coming from the hearings. This is that Ed Meese is a decent guy — reserved, of modest means, a quiet family man who has lived through a great personal tragedy, a man with close ties to his church and a highly regarded expertise in law and order.

In short, an ordinary American who has done the nation some service. The Senate, this week, should allow him to do still more.

14—Wyoming State Tribune Cheyenne—March [illegible]

Meese in the Tiger's Den

Ed Meese went before the Senate Judiciary Committee yesterday for his confirmation hearings. One member, Sen. Alan Simpson of Wyoming, put the whole thing in proper perspective with the following remarks. We reprint below an excerpted version; it says it all better than anyone else could.

—

I would like to welcome Ed Meese to the tiger's den. Let me say first that I am pleased we could start these hearings on such a light, bipartisan note.

I note that you and I are the same age — and that we served in the Army at the same time, 1954 to 1956. I relate that because we both obviously trained and qualified for long hours on the rifle range with the M1 rifle.

Do you remember that Ed? Now you are about to be hauled up out of the range pit and will soon become the target. I think you are well prepared for that. But I know that you also what happened when they would splatter away all day — and on a complete miss they would haul out a red flag called "Maggie's Drawers."

After some of these pesky rascals on the Judiciary Committee have peppered away at you during their allotted — or unallotted — time, that is what they will come up with — a big goose egg. But the ritual must be played out and that is as it should be.

We do have some members here today who would flunk a saliva test waiting for your appearance in order that they might do a tattoo on your freckled dome. No experience is required to be a critic — and anyone can qualify. We will trot out everything you have done — or uttered — and yet if somebody gathered up the collected mumblings of Al Simpson, I'd be in the clink.

As they vent their spleen on you as the alleged alter ego of this fine president, you will again be acquainted with the remarkable ambivalence of this place— a city where we have organizations that gather together and raise millions of dollars to care for every known species of tree, bird, beast or brook — and yet trot up another human being and they will exhaust the group's treasury to trash the guy.

All this under the guise of protecting the rest of us from the wretched ogre. People see through that, they see through those efforts, knowing that the real goal is to keep the old membership up — or keep the executive directors eating — and for heaven's sake, making the building payments after they have sandbagged their poor members into erecting an edifice in Washington.

Our sole purpose here today is to determine the capacity of this lawyer to be attorney general of the United States. Nothing more. When the shot and shell have stilled, it will become obvious that your education training, experience, intellect and temperament eminently qualify you for the task our president has chosen for you.

Good luck. Grab a tight rein on the bucker and come out of Chute No. 4!

B-12 ALBUQUERQUE JOURNAL Sunday, March 4, 1984

Meese Deserves a Chance

It would be foolish to believe Edwin Meese, as attorney general, would not be partial to the philosophy of the man in the White House, where Meese has worked for three years. But it would be equally foolish to think a president would choose a philosophical adversary for a Cabinet position.

President Reagan has nominated Meese, a long-time confidant and White House counselor, to replace William French Smith at the Justice Department. Meese's philosophy, troubled home mortgages, and reputation among Democrats as oppressor of the poor and hungry were very much in the limelight at the Senate confirmation hearings.

Meese has pledged to pursue "even-handed justice and equal protection of the law for all citizens regardless of race, color, sex, creed, background or economic circumstances." His law background includes a stint as assistant district attorney in Alameda County (Oakland), Calif., and the directorship of the Center for Criminal Policy and Management at the University of San Diego.

As a former insider at the White House, Meese might have enhanced access to the president. But should the need for a Justice Department probe of the White House arise, of course it would be inappropriate for Meese to head it — just as it would have been had Bobby Kennedy been called upon to investigate his brother, President John Kennedy.

The Justice Department under Meese probably would not differ much in style or substance from the Smith-led department. Those criticizing him the most probably are just blowing election-year smoke. Meese is the president's man. Reagan is in charge. Meese should get his chance.

HOUSTON CHRONICLE March 4, 1984

Meese right man for the job

Edwin Meese should be confirmed by the U.S. Senate as attorney general.

Meese has the qualifications and the experience required. He is a first-rate lawyer and a former prosecutor who earned the reputation of being a law and order man. He has served for three years as White House counselor to President Reagan, and therefore is familiar with the president's domestic policies.

President Reagan said in nominating Meese for this post that Meese "is a person whose life and experience reflect a profound commitment to the law and a consistent dedication to the improvement of our justice system."

Because Meese is controversial, the Senate hearings on his confirmation have lasted for several days. Meese has not equivocated in his statements to the senators. He said he can and will act in an "impartial, independent manner" as the nation's top law enforcement officer. He said there must be "in the Department of Justice and in our government a commitment to even-handed justice and equal protection of the law for all citizens regardless of race, color, sex, creed, background or economic circumstances."

Meese is the right man for the job, and deserves Senate approval.

Briefly noted

President Reagan the other day used a few lines from a song featured in a popular Julie Andrews film in a toast to visiting President Rudolf Kirschschlaeger of Austria, and the critics back home turned blue in the face. The movie, the critics said, "has very little to do with reality."

For years the general public has had sufficient warning that *Giant* isn't Texas and *Gone with the Wind* isn't Georgia. Now we know that *The Sound of Music* isn't Austria.

Ed Meese really is something different

By Jeffrey Hart

It is very much beside the point that Edwin Meese has been nominated for attorney general because he is eminently qualified. He is. But this a dynamic political move on the part of the president that indicates the way in which he intends to fight the 1984 presidential election. With the nomination of Meese, certain to be confirmed by the Senate, Reagan has signaled that he plans to come out fighting on domestic issues, and challenge the Democratic nominee on liberal campaign rhetoric.

CBS-TV's Dan Rather was so excited over the Edwin Meese nomination that he called him "Edmund" Meese, but Rather did proclaim the Democratic objections to the genial Californian, and Reagan apparently is going to fight on exactly that line.

I myself have known Ed Meese since 1968, when he was Reagan's assistant chief-of-staff in the governor's office in Sacramento. He later became chief of staff.

Meese at that time was not only a successful practicing attorney, but had a scholarly interest in the criminal law. He pursued this by establishing an institute in San Diego for the study of the criminal law and its application, and his institute earned him a national reputation among scholars and legal professionals. He has taught courses in criminal law in the California university system and elsewhere.

The departing attorney general, William French Smith, is a graceful and gentlemanly fellow who has done a good job, but Ed Meese is something different. He has the personal character and the intellectual stature to be the point man on the key domestic issues in the coming campaign.

Whatever the horror, feigned or real, of the media and the Democratic nominees, Meese holds the high ground of majority opinion on the issues under dispute.

Meese supports capital punishment for gross murderers. So does an increasing majority of the public. Despite the large percentage of blacks on death row, black voters support capital punishment. The most frequent victims of violent crime, blacks want stricter law enforcement for excellent reasons.

Meese had the courage and common sense to wonder aloud about the issue of "hunger" in America after our years of spending billions of dollars to alleviate it. But everyone knows that there are multiple causes for bag women, Bowery bums, neglected children and lonely sociopaths beyond the reach of food stamps. There will always be cases that no amount of government expenditure and effort can reach.

Meese is against racial and gender quotas, and so is practically everyone else. The Supreme Court has been ambivalent, but it will cease to be so as soon as Reagan appoints three or even four new justices during his second term.

Meese is against racial busing. So is everyone else, including a majority of blacks, whatever their so-called spokesmen say.

Walter Mondale, Jesse Jackson and the rest indulged in instant denunciation of Meese, calling him "insensitive" on minority issues.

Setting aside questions of his sensitivity, he is right on the issues. In this political context, sensitivity must mean being wrong on the issues.

By nominating Meese, the president has thrown down a challenge to his eventual Democratic opponent. He has said, in effect, "Well, gentlemen, if you want to fight it out along the line of these issues, I will be glad to meet you — starting right now."

Meese signals a tough, aggressive political approach to the campaign and a bid for an overwhelming electoral majority on the gut domestic issues. Meese signals to the Democrats that they are not going to be able to gaze at the horizon and run on foreign policy, as they wish to do.

Ronald Reagan is stirring. He knows the rhythms of politics, when to lie low and when to gain attention and draw the battle lines. The most active Republican partisans sometimes grow impatient with him, but he is like a crocodile who only seems to be slumbering. All the time, he is quietly watching, and suddenly he has his opponent's leg in his jaws.

Hearst News Service

WEDNESDAY, FEBRUARY 1, 1984 — THE INDIANAPOLIS STAR —

Falling Skies R

Once again, for the umpty umpth time, incensed militants are running about shouting "The sky is falling!" – this time because President Reagan has chosen White House counselor Edwin Meese to succeed William French Smith as attorney general.

Such critics rank Meese to the right of Smith and Smith to the right of Nero, Caligula and Attila the Hun.

It is simply not true, as many reports claimed, that Smith reversed civil rights, antitrust and criminal law enforcement policies that had stood during the four previous administrations.

What he did was to shift below racing gear on policies that had reached punitive excesses – the drive for mammoth forced busing orders, the unisex push that barred father-son Scouting banquets and demanded coed football teams, quota policies that created a vast new class of discrimination victims, and other absurdities.

Did Smith cancel the nation's array of racial balance busing orders or the array of civil rights laws guaranteeing equal rights to racial and other minorities? No, he did not.

As for criminal law enforcement, Smith did begin to restore reason and strictness by trying to modify "revolving door justice" that continually turned many repeater, violent criminals into the streets to commit new crimes. That legal posture undoubtedly had contributed to the doubling of the U.S. murder rate in 20 years.

Meese is expected, if his appointment is confirmed, to be a "law and order" attorney general. During the outbursts of the 1960s and 1970s, radicals often said that "law and order" meant "anti-black."

Hardly anything could have been more insulting to millions of decent, law-abiding black Americans than this snide insinuation that all or most blacks are criminals. And few things were more unrealistic than weakening law enforcement when blacks outnumbered whites as crime victims.

During the last few years crime nationally as well as locally has declined somewhat. But it is still unacceptably high.

Crime and violence remain a corrosive poison that impairs the quality of life throughout the nation. Organized crime and the illicit drug traffic remain national scandals that steadily cost the nation megabillions of dollars and unknown numbers of destroyed lives.

Right now the nation needs a strong, tough, no-nonsense attorney general like Ed Meese.

If his nomination is confirmed the sky will fall all right – on heads it ought to fall on.

Publisher's Report

ON THE
Sidewalk

ATTORNEY
TOM BERKLEY

Edwin Meese

President Ronald Reagan once again showed his loyalty to his ong-time staff members when he touched Ed Meese, one of Oakland's fair-haired boys, to serve as United States Attorney General.

This is another star in the crown of Oakland, as it has put one of our most loyal citizens as Head of the Justice Department of the United States and makes him even more closely identified (and with more responsibilities) to the President of the United States. Not only does he have more responsibility, but Meese loses none of his close association with Ronald Reagan as he moves to attempt to be the President of the United States for another four years.

It was in 1969, when Ed first came to the attention of Ronald Reagan, who was then Governor of the State of California and Meese was appointed State Legal Affairs Secretary. From there, he became Reagan's Chief of Staff for the remaining eight years that the President was Governor of the state. In the interim years between his governorship and ultimately becoming the Chief Executive of the United States, Ed has been a constant associate of the President and has carried on his shoulders many of the major responsibilities that the governorship and the White House placed upon the shoulders of Ronald Reagan.

POLITICAL PHILOSOPHY

It goes without saying that in his tenure with the President, he has been loyal to him in carrying out the President's political philosophy, both as a Governor and as a President, and has earned high marks in this assignment.

Earl Warren, who was the District Attorney for Alameda County and subsequently became the Governor of the state of California, spawned a political philosophy very much like the one that Ed Meese is putting together. Those long-time residents of Oakland remember how Earl Warren ran for President and. ultimately became the Chief Justice of the United States Supreme Court. All this is possible for Ed and more. Those of us who have known him since he was a young man plying his trade as Deputy District Attorney of Alameda County, where I and many other lawyers had an occasion to observe him in his fairness and compassion, obviously wish him well.

It would be difficult to speculate to the amount of good that he has done for the City and the County and its citizens. His elevation and career is one that all of us can be proud of.

His father before him served the County. well, too, in the capacity of Tax Assessor for over 15 years. It was his father's influence and the good fortune that he had to be born in Oakland that helped lay the foundation for the kind of character and dedication to hard work and loyalty that went into molding Ed Meese into the kind of person that he really is.

He has never failed to support those things that are important to the County. For example, the East Bay Regional Park District, where he worked in 1947 for $2.50/day; his support for citizens who called upon him to aid them as they attempted to work with the bureaucracy whether or not it was state or federal; his loyalty to his many friends in Oakland is legendary and his friends are legion that he has taken the time in his busy career to help when they needed him.

I suppose he could be referred to as a "Renaissance Man." It goes without saying that he will make a substantial contribution to President Ronald Reagan's cabinet. His loyalty is unquestioned and his trust by the President is monumental. In short, the transfer of Edwin Meese from Counsel to the President to United States Attorney General bodes well for this community and solicits from men of good will an enthusiastic congratulations.

I too, am one who has been touched by his generosity. I speak from this point of personal involvement. A few months ago, I was invited to the White House to be briefed by the Executive Staff and had a chance to request him to speak in favor of a project in which I was interested. His response to me was positive, his action was immediate and the results were as I wished. It gives me a great personal satisfaction to speak of his worth and to his value to the City, County, the State, and the Nation.

A-18 THE CINCINNATI ENQUIRER Thursday, January 26, 1984

THE ENQUIRER

A Gannett Newspaper

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JUSTICE

Meese, as Smith's successor, may be one of Reagan's best appointments

EDWIN MEESE III will be a tough, no-nonsense attorney general. Importantly, he wants the job, which is more than could be said for the retiring William French Smith. He will be a highly active Justice Department head who won't flinch from controversy.

Yet if his nomination pleases Mr. Reagan's most conservative supporters, the vaccuum he leaves in the White House won't. The President, curiously, has decided not to replace him as counselor. That may save on payroll — though obvioulsy this wasn't his main intent — but it won't please those who worry about Mr. Reagan's vulnerability to advisers more pragmatic but less ideological than Mr. Meese.

While Mr. Smith's action as the sixth member of Mr. Reagan's Cabinet to resign was a jolt, it wasn't wholly unexpected. He was never enamored of the job. He apparently accepted it mainly as a favor to the President, for whom he had worked as tax lawyer and financial adviser. Neither Mr. Smith, who did a credible job, nor his wife loved Washington. Both, presumably, will be happier back home in California.

By contrast, Mr. Meese thrives in the political arena, having served as chief of Mr. Reagan's staff when the President was governor of California. Moreover, a good record as attorney general, assuming Mr. Reagan's re-election, could point him toward a Supreme Court vacancy.

One of Mr. Meese's longest suits is that he is a crime fighter who fervently believes and will vigorously acknowledge that a victim's rights are at least as important as those of the accused. While Mr. Smith put the Justice Department on a commendably activist course in pursuing organised crime and drug racketeers, Mr. Meese will almost certainly be more aggressive. He may be just what Justice — and the nation — need, and turn out to be one of Mr. Reagan's top Cabinet choices.

Thursday, January 26, 1984 The State Journal-Register Springfield, Illinois

Meese's nomination setting off fireworks

THE ONLY SURPRISE about Attorney General William French Smith's resignation was its timing. The quiet, patrician Smith never regarded himself as a fixture in the capital and, accordingly, he and his wife chose to reside in a downtown Washington hotel rather than to lease or buy a suburban home.

His departure at the end of President Reagan's first term was a given in Washington circles. That he should resign at this particular time is another vivid indication that Mr. Reagan will soon announce for a second term; Smith has been an active participant in all of the Reagan campaigns and, indeed, he said he was motivated more by politics than by a yearning for California sunshine.

That Mr. Reagan should immediately name Edwin Meese III, his White House counselor, to be the next attorney general, confirms a solid tradition in recent years of presidents appointing alter egos or very close associates to head the Department of Justice. Smith, closer to Ronald Reagan than any other Cabinet member, often described himself as "the president's lawyer." That is precisely what Meese will continue to be, assuming he is confirmed.

Without Washington experience or much knowledge of the Justice Department, the low-keyed Smith was sized up as a lightweight in the earlier days of the administration. But the Justice Department under Smith reshaped the face of American justice and stirred storms of controversy.

REVERSING THE direction of recent presidents of both parties, the department aggressively opposed busing and reverse discrimination as civil rights mechanisms, loosened antitrust restrictions, stepped up efforts against drug smuggling and organized crime and waged an intense campaign to curb activist judges. Attorney General Smith crusaded against creation by the courts of new "fundamental rights" that benefit criminals at the expense of society.

The Meese nomination is already setting off fireworks, left and right. The liberals are exercised because they rightly fear that Ed Meese will be more visible, vigorous and even more effective than was William French Smith; they plan what one Democratic senator predicts will be "a hell of a grilling" during forthcoming Senate confirmation hearings.

The conservatives are dismayed that, with Meese departing the White House on the heels of his fellow-conservative, Judge William P. Clark, who succeeded James Watt as secretary of the Interior Department, there will be no offsetting balance to the relatively liberal pragmatism of White House Chief of Staff James Baker and his deputy, Michael Deaver.

Meese has been a law-and-order enthusiast since his days as deputy district attorney in Alameda County, Calif. during the early 1960s. It would appear that, in contrast with Judge Clark, who has taken a subdued approach that calms the troubled Interior Department, Ed Meese will have a much sharper image at the Justice Department than his quiet predecessor. This is apparently what President Reagan wants in both instances.

THE WICHITA EAGLE-BEACON Tuesday, January 24 1984 7A

Meese Is Law Enforcement's Kind of a Guy

By Aaron Epstein
Of Our Washington Bureau

WASHINGTON — If police officers and prosecutors could select the nation's top law enforcement officer, their choice might be the very man that President Reagan named Monday to become attorney general — White House counselor Edwin Meese.

Meese is an unqualified admirer of the police, an unyielding conservative on law and order issues who, as a county prosecutor in California, used to love riding in patrol cars, talking to cops about their day-to-day problems.

A federal drug enforcement official told a reporter:

"Ed Meese is our kind of guy."

Meese is Rep. William Hughes' kind of guy, too.

Hughes, D-N.J., a former prosecutor and chairman of the House crime subcommittee, predicted that Meese would fight for a high Justice Department budget and "become a catalyst" for legislation to increase penalties for drug offenders and other criminals, to make it easier to extradict criminals from one jurisdiction to another and to weaken protections for defendants.

CHATTANOOGA NEWS-FREE PRESS, TUESDAY, JANUARY 24, 1984

Meese Named, Attack Begins

The nomination of Edwin Meese III to be attorney general of the United States, succeeding retiring William French Smith, has set off an immediate attack by the Democratic political leaders who are looking for partisan advantage more than they are looking for tough legal leadership for our nation's Justice Department.

House Speaker Tip O'Neill said he thinks the nomination of Mr. Meese "is bad, to be perfectly truthful."

And Democratic presidential front-runner Walter Mondale asserted, "Mr. Meese is unfit to be the highest law enforcement official in our land. Based on his record, Mr. Meese's guiding principle appears to be 'with liberty and justice for a few.' "

With criticism from such sources, the nomination of Mr. Meese should be heartening to many Americans. And that his predecessor did a good job may be indicated by an interesting attack upon him. Tass, the Soviet news agency, assailed outgoing Attorney General Smith as a "racist with a stained reputation." If Mr. Meese and Mr. Smith were popular with Mr. O'Neill, Mr. Mondale and the Soviets, there would be cause to wonder, indeed. Perhaps "by their opponents we shall know them."

Mr. Smith is a brilliant attorney who long had handled President Ronald Reagan's personal affairs, and had been his business counselor and political helper before being named to the Cabinet office. Under him, the Justice Department did many notable things. It cracked down in a big way on the illegal drug traffic, gaining military cooperation with enforcement efforts aimed at the large-scale importation of illegal drugs into this country. His efforts have had great success. He also has changed the Justice Department emphasis on civil rights away from the foolishness of forced busing and the injustice of quota systems, substituting an effort for real equal application of the law without regard for race, opposing both discrimination and reverse discrimination. In anti-trust matters, he has been inclined to reduce federal interference, increasing market freedom.

Mr. Meese has been an ardent, vociferous leader in the Reagan administration. Quick of mind, firm in conservative principle, he has displayed a talent for expressing directly and clearly the conservative principles and policies of the president. In doing so, he has occasionally gotten into hot water, as in the case of recent remarks on the "hunger" problem. But usually such difficulties have resulted from accidental or purposeful lack of full, honest reporting of what Mr. Meese has really said rather than from error on his part.

It is the right of the president under our Constitution to appoint to his Cabinet posts the people he thinks will best carry out his aims. Such appointments are confirmed with the "advice and consent of the Senate." That gives the political opponents a chance they will enjoy to try to tear down the president's appointments.

In the case of Mr. Meese, we may expect loud political fireworks from Democrats in this election year, followed by his confirmation and then effective service as a soundly conservative and able attorney general of the United States.

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"Our liberty depends on freedom of the press and that cannot be limited without being lost."—Thomas Jefferson

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editorials

Meese rates approval as attorney general

DEPARTURES of officials from President Reagan's team in Washington will give Congress a host of new appointments to approve. But the first order of business should be to approve White House counselor Edwin Meese as U.S. attorney general. As Senate Majority Leader Robert Dole says, "we've held Ed Meese hostage long enough."

The president's choice of Meese to replace William French Smith as head of the U.S. Department of Justice met considerable opposition last year. Questions were raised about the nominee's financial dealings and acceptance of loans from persons who received federal jobs. However, politics figured heavily in the tough going-over he received.

Democratic senators found Meese a tempting target in a year in which they were trying to unseat President Reagan. The upshot of the initial confirmation hearings was that a court (with Meese's support) appointed an independent special prosecutor to investigate him — prominent Washington attorney Jacob Stein.

Stein thoroughly investigated Meese's personal finances and in the end, cleared him of criminal suspicion. The special prosecutor said in a report issued in September that there was "no basis" for prosecuting Meese in connection with any of the matters that came to light during the Senate Judiciary Committee hearings.

Meese has had a close association with governor, candidate and President Reagan during a long and distinguished governmental career in California and Washington. A lawyer, he has worked as assistant Alameda County district attorney, as a University of California law professor and as Reagan's legal affairs secretary in Sacramento.

He can be faulted for carelessness in keeping his financial affairs above suspicion. But Meese is a man of honesty and integrity who is well-qualified to take over a department that plays a key role role in constitutional interpretation, the general thrust of law enforcement and the selection of judges.

Earlier this month, President Reagan renewed his request to the Senate to confirm him. After a year of delay and mudslinging, Meese deserves support from the Senate Judiciary Committee and confirmation by the full Senate so he can promptly assume his new responsibilities.

Attorney General Smith, who waged war on violent crime and drug traffickers, has done much to return the Justice Department to a sound, law-and-order course. Meese is a sound choice to continue policies which have given many Americans confidence that they finally had a defender in nation's top justice slot.

The **Chairman**. And I want also to state that agreement was reached, as has been announced, that the committee will vote on next Tuesday, February 5, 1985, at the meeting which will convene at 10 a.m. on Mr. Meese. It is understood that there will be no efforts to block the vote on Mr. Meese, and all members have agreed that there will be no effort of any committee member to lay this nomination over. The vote will occur next Tuesday.

Now, does the distinguished Senator from Alabama have any statement?

Senator **Heflin**. No, sir.

The **Chairman**. Thank you. Does the distinguished Senator from Utah have any further statement?

Senator **Hatch**. No, thank you, Mr. Chairman.

The **Chairman**. Well, I just want to make this statement, that when the President appoints someone to a position in the Government, it is assumed that he has the qualifications to fill that position. When President Reagan appointed Mr. Meese to be Attorney General, we have to assume that President Reagan felt he had the qualifications and that it is assumed that he is qualified to serve.

Now, I announced during the beginning of the hearing that I endorse Mr. Meese strongly and unless something came up that I did not understand or foresee, that I would continue to support him for Attorney General.

I want to say for the record that nothing—and I repeat, nothing—has come up in this hearing to change my mind. I am convinced that the record is clear that Mr. Meese should be confirmed as Attorney General of the United States.

I don't see how after the testimony that has been presented here any member of this committee could afford to vote against him. However, each Senator has his own right to vote as he pleases.

Mr. Meese, in my judgment, is an honest, capable, dedicated and patriotic citizen and public official. I hope that we can soon get him confirmed and that he can take office, and, in my judgment, he will make one of the ablest and finest Attorney Generals that this country has ever had.

If there is nothing else now to come before the committee, the committee now stands adjourned. The testimony has all been completed, all witnesses have been heard who desire to be heard, and we feel that we have fulfilled our duties on the process of confirmation.

[The committee adjourned at 7:16 p.m.]

APPENDIX

ARTICLES

[From the New York Times, Sept. 25, 1981]

THE WHITE HOUSE—NO. 1 MAN ON REAGAN'S STAFF ANSWERS HIS CRITICS

(By Howell Raines)

WASHINGTON, Sept. 24—Mention Ed Meese's briefcase to White House aides, and you are almost certain to get a laugh. The insiders' joke is that the briefcase is a "bottomless pit" into which schedules, programs or political careers can disappear without a trace.

According to one account now making the rounds, a message directing Defense Secretary Caspar W. Weinberger to cut military spending also disappeared into Mr. Meese's briefcase last month, never to be delivered. The result, according to this account, was the embarrassing public squabble between Mr. Weinberger and David A. Stockman, the budget director.

Mr. Meese dismisses this story as "totally untrue," but the briefcase joke and the Weinberger anecdote illustrate the rich selection of Ed Meese lore circulated privately by White House aides. The fact that no official will repeat such talk on the record affirms a central fact of existence in the Reagan Administration: As counselor to the President, Edwin Meese 3d is the most powerful figure on the White House staff.

SYNTHESIZER AND CONCEPTUALIZER

One source of that power is his ability to get Mr. Reagan to banish advisers who cross Mr. Meese. But his admirers also hail the 49-year-old lawyer as, in the words of one senior official, "the best synthesizer and conceptualizer in the White House."

Even in areas where he has little experience, such as foreign affairs, Mr. Meese appears to be a fast learner. The President especially values his ability to reduce complex issues to the clear-cut decision options preferred by Mr. Reagan.

Still, Mr. Meese has been hit with a blizzard of bad publicity since his widely criticized decision not to wake President Reagan in the Libyan incident. Some of his colleagues worry that he will become a target of the kind of journalistic salvos aimed at Secretary of State Alexander M. Haig Jr. earlier this year.

In an interview, Mr. Meese disputed reports that he shared those worries about his image and credibility. But he seemed anxious to talk about criticisms of his managerial and personal style. They range from suggestions that he is an overburdended and disorganized administrator to satirical comments about what some witnessess regarded as his imperious behavior aboard the carrier Constellation.

ANOTHER SIDE OF THE STORY

Heretofore, Mr. Meese said, no one has ever asked him for his side of the Constellation story. On that occasion, Mr. Meese was provided a white draped chair exactly like that given Mr. Reagan when they watched a firepower display from the flight deck. Some accounts suggested that Mr. Meese was grandly claiming perquisites that ought to be reserved for the Commander in Chief.

Unbeknownst to him, Mr. Meese said, the Navy had accorded him and several officials honored seats "in order of protocol," reflecting the fact that Mr. Meese was the only Cabinet-level official present.

"But that was not done by me," he added, "I had no choice, other than if I had chosen not to sit there. It would have been insulting to our hosts, I guess, because when I got out there, there was a chair with my name on it. So I thought that was kind of a cheap shot, to tell you the truth."

Talk of "cheap shots" is not characteristic of Mr. Meese, normally a practitioner of the never-complain, never-explain school of press relations. In fact, a print of a bull elephant crashing through the underbrush has displaced the Reagan portrait behind Mr. Meese's desk. It provides an apt metaphor for the way Mr. Meese crashes through the underbrush of whispered criticism that surfaces in stories questioning his organizational skills and judgment.

"Well, I've heard that commented on in the news media, but when you try to track somebody down and say, 'Well, give me an example, they usually don't come'," he observed, adding that "the disorganization issue is one that I have never been able to pin down."

THE SOCIAL SECURITY DISASTER

Privately, Mr. Meese's critics cite examples such as his six-hour delay in informing Mr. Reagan that Navy jets had shot down two Libyan aircraft. They also recall his failure to kill a politically disastrous plan to cut Social Security benefits even though Mr. Meese was the first of Mr. Reagan's "Big Three" advisers to hear about it.

Although the plan led to the first big political reversal of Mr. Reagan's term, Mr. Meese still defends it as a "sound proposal."

"It was not the policy aspect that was the problem," he said. "It was the fact that the selling of it, the marketing of it, which is not my domain, was the problem."

Selling Administration proposals is of course, the domain of James A. Baker, 3d, the White House chief of staff. But Mr. Meese hastily denied that he meant any criticism of the man widely regarded as his only serious threat to dominance at the White House.

In fact, like the two largest lads on the schoolyard, Mr. Meese and Mr. Baker carefully avoid fights with one another. Despite their amity, there are enough foul-ups and personal conflicts, after eight months on the job, for strains to surface in so large and ambitious a group as a Presidential staff.

A MESSAGE FOR WEINBERGER

That accounts, in part, for sub rosa stories like that of the undelivered message to Mr. Weinberger. An Administration official said that, before Mr. Reagan's monthlong vacation, Mr. Meese, Mr. Baker and Mr. Stockman agreed that there had to be more cuts in the military budget, despite Mr. Weinberger's opposition. Mr. Meese was to tell Mr. Weinberger, a sharp-tempered man he had admired since they served together when Mr. Reagan was governor of California.

But when Mr. Weinberger publicly disputed the cuts, it dawned on everyone that Mr. Meese had not delivered the bad news to Mr. Weinberger. "Ed had not been able," the official concluded, "to tell Cap we're not talking about whether, but how much."

Mr. Meese denied that he was intimidated by Mr. Weinberger or that he and his colleagues could make a budget decision, since that is "the province of the President." He added that "the idea that we would decide among ourselves and communicate to Cap—that would not be possible or proper or even considered."

His comment goes to the heart of Mr. Meese's strong views on Presidential decision making and the veil of privilege he thinks should be drawn over White House deliberations.

A LAWYER-CLIENT RELATIONSHIP

"I think it's important for me as the chief policy adviser to say very little that would tend to lead what direction the President is leaning in," Mr. Meese said, contending that disclosure of Mr. Reagan's preliminary thoughts on an issue could mislead the public and chill Cabinet discussions. "To me, in many ways it smacks of the lawyer-client relationship, where you have an obligation not to unduly divulge the confidence of your client or, in this case, the President."

White House aides who have to live with Mr. Meese's rule of "no decision" answers to questions about hot issues worry that this rule invites the public to perceive Mr. Reagan as indecisive and disconnected. That, of course, is the underlying message of the cartoons suggeting that Mr. Reagan sleeps while "President Meese" runs the country.

"Obviously, the idea is untrue, so I take it as essentially a joke, or in a humorous vein, as being cast in a humorous vein, which I think for the most part it is," Mr. Meese said.

Another thing that Mr. Meese takes humorously is the joke about his briefcase. He has heard it and it makes him laugh.

MEESE ON MEESE

On his dealings with the President: "I think it is a lawyer's natural disinclination to divulge facts until the decision is made.

"Very seldom is it productive for me as a person who is one of those in the White House who is very knowledgeable about what's going on to lay that out to the press. I don't think that helps the President. Sometimes that puts me at odds with members of the press.

"Well, I tell you, it's a problem, because I know it bothers some of the members of the press. But here's the thing—again, it's my lawyer's training—and that is, I don't think it helps the President to reveal a lot of internal stuff."

On whether the "President Meese" jokes reflect badly on President Reagan: "Well, I certainly hope it wouldn't, because there's no basis for it. You know, the news media gets on to something, and there's a certain herd instinct among writers, so if one writes it, then several others do. So usually you just have to wait for this to pass."

On his boss: "See, I feel that Ronald Reagan is the best decision maker I've ever met. My background includes government, education, business and academic life, and I've seen a lot of executives in the military as well. Frankly, he is really the best decision maker, because he has the capacity to assimilate all the information and to keep his mind open until the point of decision and then he makes a decision. And that decision is often different than what I might have made or what the other advisers, the Cabinet for example, might have made."

On reports that he has become enamored of the spotlight: "I think people who know me would describe me as a self-effacing rather than aggrandizing."

[From the New York Times, Jan. 30, 1982]

MEESE AND SECRECY

(By Anthony Lewis)

Edwin Meese and his colleagues on the White House staff have identified one obstacle to Mr. Meese's early confirmation as Attorney General, and they hope to deal with it by compromise. That is President Reagan's order of last March 11 creating a lifetime censorship system for officials who see highly sensitive information.

The Reagan order was widely criticized in Congress as a radical and unjustified departure from established law. Last October the Republican-controlled Senate voted, 56 to 34, to suspend enforcement of the order until April 15 for further study. The House agreed, and the suspension is now in effect.

With the censorship plan in that suspended state, Mr. Meese could expect intensive questioning about it at his confirmation hearings before the Senate Judiciary Committee. Moreover, the committee's second-ranking Republican, Charles McC. Mathias of Maryland, sponsored the amendment blocking enforcement along with Senator Thomas Eagleton, Democrat of Missouri.

What the White House obviously wants to avoid is a situation in which Mr. Meese becomes hostage to a fight over the censorship plan. Such a struggle would delay a final vote on his nomination in the Judiciary Committee, which tends to proceed with deliberate speed anyway. And delay would allow critics of the Meese appointment to work up opposition.

To avoid delay and risk to Mr. Meese, Mr. Reagan's staff has been talking about ways of pulling back on the March 11 order and thus muting Congressional criticism of it. Possible ideas for compromise will be taken to Capitol Hill for discussion soon, very likely this week.

The March 11 order, formally entitled National Security Decision Directive 84, covers all officials and Federal contract employees who see what is known as Sensitive Compartmented Information. That is 127,500 persons now, and the number would quickly grow as they leave and are replaced.

Everyone covered would come under a censorship system for the rest of his life, even after leaving Government work. He would have to submit for clearance anything he wanted to write—books, newspaper articles, speeches—if it might arguably reflect classified or even unclassified information about intelligence matters.

The sweep of the order is so broad that former officials would effectively have to clear anything on national security subjects. A Cyrus Vance or Alexander Haig would not be able to write for a newspaper Op Ed page about Lebanon or Grenada without submitting the proposed piece to censors—censors who might be directed by an administration of the other political party.

Compromise on that drastic censorship system might seem impossible, but in fact the White House staff has little personal commitment to it. The order was drafted by a conservative ideologue at the Justice Department, Richard K. Willard, apparently at the direction of William Clark, then President Reagan's national security adviser. It never went through the regular White House clearance process.

Mr. Willard has already been up to Capitol Hill floating one idea for a substitute plan—but it is about as savage as the original. It would create a system of heavy financial penalties for leaks, to be imposed by administrative officials who could also subpoena reporters to find out who leaked.

Another possibility the Reagan people have considered is a criminal statute against leaks, but its chances would truly be just as dim. Congress is well aware that administrations often denounce, as leaks, information that Congress and the public must have to do their job of checking Government policy.

Still another idea being discussed would be to cut off the censorship obligation at some point—say 12 years after a person left Government—instead of having it run for life. But that seems unlikely to strike Congressional critics as persuasively logical. Finally the White House might offer to put the whole issue aside for a year, until after the election.

The key figure in any negotiations will be Senator Mathias. His temperament is for accommodation. But in this instance it is hard to see why he would accept any compromise that left intact the essence of the radical censorship plan, or that invited its reimposition by a re-elected President Reagan next year.

Senator Mathias knows that White House support for the March 11 order was waning long before the Meese nomination. Critics of the order had really won the argument that there was no showing of need for such a drastic change in the American tradition. If Mr. Meese wants to avoid entanglement with the censorship plan, the simple solution is for the President to drop it.

[From the New York Times, Jan. 30, 1984]

THE DOUBLE STANDARD

(By Tom Wicker)

ATLANTA.—The U.S. Senate will soon be getting around to hearings on President Reagan's nomination of Edwin Meese to be Attorney General. That raises a good question in the mind of Bill Shipp, a columnist for The Atlanta Constitution.

Not without a touch of hometown asperity, Mr. Shipp asked on The Constitution's editorial page: Will the Judiciary Committee give Mr. Meese the kind of tough going-over that it laid on in 1977 for Griffin Bell, President Carter's nominee for the same office? Or will it let Mr. Meese off with the sort of soft stroking it extended to his predecessor, the unlamented William French Smith?

Is there, in other words, a double standard? You bet there is, and not just in the case of Mr. Bell and Mr. Smith. And it remains to be seen whether the Judiciary Committee can be energized by Democratic Senators to get the kind of answers from Ed Meese that it never even sought from Mr. Smith:

Is Mr. Meese too close to the President, personally and politically? In 1977 Republican senators argued, as Mr. Shipp pointed out, that Mr. Bell should not be confirmed as the Government's top legal officer because he had written speeches and raised money for the Carter campaign. Ed Meese, of course, was the campaign director in 1980, a friend and political associate whose career was all but inseparable from Ronald Reagan's.

Is Mr. Meese "insensitive" to civil rights issues, as the same Republican senators insisted Griffin Bell was? What was Mr. Meese's role in the Reagan Administration's long assistance to extension and strengthening of the Voting Rights Act? And was he not the architect of the Reagan plan to grant tax exemptions to segregated private schools? Would that be worth fighting Mr. Meese's nomination for two days on the Senate floor, as Republicans fought in the case of Mr. Bell?

Will Mr. Meese play a political role in the 1984 campaign, or any future Republican campaign? In 1977 Griffin Bell was required, as a condition of confirmation, to pledge that he would take no part in a Presidential campaign after he left the Justice Department. This year, William French Smith announced that he was resigning as Attorney General, in part so that he cold play a role in Ronald Reagan's re-election campaign.

The Judiciary Committee misjudged Mr. Bell, who became a rather distinguished Attorney General, as Senator Charles Mathias later acknowledged in a Senate speech. It misjudged Mr. Smith (of whom it asked no tough questions and who was not required, as Mr. Bell had been, to resign from segregated private clubs), because he brought little to the Justice Department but a taste for social activities.

In Mr. Meese's case, the Bell treatment rather than the Smith default surely seems in order. At the least, the same kind of nonpolitical guarantees ought to be sought, if the Justice Department is really to be the kind of independent and even-handed agency to which all senators and all Presidents pay lip service.

But it's not at all clear that Democrats on the committee have the gumption to deal properly with Ed Meese. And it's not only in the Judiciary Committee that a double standard seems to be in operation. Most of the rest of Congress, the press and a large part of the public—among whom Mr. Reagan's popularity remains high—seem to be afflicted by it.

The Jan. 14 issue of the National Journal, for example, contains a two-page spread in which 40—count 'em, 40—officials and nominees of the Reagan Administration whose actions, the magazine said, "put the Administration in a bad light, apparently without permanently affecting the public's image of" Ronald Reagan, are featured. The list is a shocker.

Here is a record replete with conflict of interest, perjury, illicit eavesdropping, inadequately explained cash payments, outrageous expenses charged to the public, dereliction of the duty to enforce the laws, scarcely concealed circumventions of law, double billings, questionable loans (one to Ed Meese), improper decisions, failure to disclose significant financial involvements, trading on the White House name, tax irregularities, unsavory former business dealings, violated promises, favoritism, insider trading, dubious ethics, even the improper use of Government chauffeurs.

Richard Nixon or Jimmy Carter would have been pilloried, and properly so, for such a scandalous record. Any President should be held responsible by Congress, the press and the public for choosing the associates and allowing the ethical atmosphere that produced this sorry catalogue of misdeed and impropriety. Instead, Ronald Reagan has been smiling through it all, uncaring, unscratched, hardly even touched by criticism or reproach.

Yes, Mr. Shipp, there is a double standard. Don't bet that Ed Meese won't benefit from it, too.

[From the New York Times, Jan. 25, 1985]

COURT ENDS SECRECY ON MEESE'S REQUEST FOR FUNDS

(By Stuart Taylor Jr.)

WASHINGTON, Jan. 24.—A special Federal court issued an order late today to end the secrecy surrounding a request by Edwin Meese 3d for more than $700,000 in government funds to pay his personal lawyers.

Mr. Meese, President Reagan's counselor and his nominee to be Attorney General, is seeking the money to pay lawyers who represented him, at rates ranging up to $250 an hour, in connection with an investigation of his financial affairs by an independent counsel.

The court ordered that Mr. Meese's voluminous fee application, and the responses to it that have been filed by the independent counsel and the Justice Department, be made available for public inspection on Friday.

The order will bring into the open an extraordinary proceeding that has been unfokding for more than a month in tight secrecy, with all documents filed under seal, as required by law.

Mr. Meese's fee application raises novel legal issues. It is the first test of a 1983 amendment to the Ethics in Government Act of 1978 that authorized reimbursement, in certain circumstances, of attorney's fees incurred by officials who have been investigated by independent counsels.

NO CONFIRMATION OR DENIAL

The application puts Justice Department lawyers responding to it in an awkward position because they expect Mr. Meese to be their boss soon.

Judy Pond, a Justice Department spokesman, refused today to comment on the fee request. She would neither confirm nor deny a report that the department had filed papers with the special court raising mild questions about it.

Those who have seen the application have said the total amount being sought was more than $700,000 and that the hourly rate for each of two senior attorneys was $250. But even those figures have not been disclosed or confirmed by the court or any of the parties involved.

The three judge court said today that "there is a legitimate public interest" in the matter. The order did not mention a hearing on Mr. Meese's nomination set for next Tuesday by the Senate Judiciary Committee.

The special court consists of three senior judges from the United States Courts of Appeals, Roger Robb of the District of Columbia; J. Edward Lumbard of the Second Circuit, in New York, and Lewis R. Morgan of the Eleventh Circuit, in Atlanta.

JUDGES ACT AS SPECIAL COURT

The judges, all semi-retired, act together as a special court based here solely on matters involving investigations of officials by independent counsels under the Ethics Act.

Details of Mr. Meese's fee application and the position taken by the Justice Department, if any, have been kept secret because the parties considered themselves bound by the Ethics Act to file their papers under seal unless and until the court ordered otherwise.

While this has so far kept public scrutiny of the matter to a minimum, the amount sought by Mr. Meese was questioned in a sealed document filed earlier this month by Jacob A. Stein, the independent counsel who investigated him, according to lawyers familiar with the case.

Mr. Smith refused to comment today. In September, after a six-month investigation, he filed a report concluding that there was no basis for prosecuting Mr. Meese for any crime.

Some Justice Department lawyers, in internal deliberations, and some critics of Mr. Meese have also said the amount sought seemed difficult to reconcile with the Reagan Administration's effort to curb awards of Government money to pay the attorneys' fees of civil rights plaintiffs, small businessmen and others who prevail over the Government in court.

And officials including Deputy Attorney General Carol E. Dinkins testified in Congress last year that civil rights and other laws should be changed to limit fee awards against the Government to $75 an hour.

STATEMENT BY LAWYERS

Leonard Garment and E. Robert Wallach, Mr. Meese's two principal lawyers, refused today to specify the amounts or rates sought without court permission, but said they were "consistent with private fees charged by law firms of comparable quality in comparable efforts."

In a joint statement in response to a reporter's questions, they said that to have sought lower rates "would have subjected Mr. Meese to the possible political criticism that he had accepted preferential treatment."

Mr. Meese did not return a reporter's telephone call seeking comment.

The 1983 amendment to the Ethics Act was designed to prevent undue financial hardship for high-level officials who, because of the special requirements of the independent counsel law, are subject to more extensive criminal investigations than ordinary citizens would be.

The amendment authorizes any official who have been investigated by an independent counsel, and has not been indicted, to ask the special court for "reimbursement for all or part of the attorney's fees incurred" in the matter.

But it does not require the court to grant such a request, and precludes reimbursement of attorney's fees that would have been incurred even if there had been no investigation by an independent counsel.

A 1982 Senate committee report said "the committee believes that reimbursement of attorneys' fees would be warranted, if at all, in only rare circumstances." The Justice Department took the same position in Congressional testimony.

[From the New York Times, Jan. 30, 1985]

MEESE, TESTIFYING, DEFENDS HIS PAST CONDUCT AS ETHICAL

(By Leslie Maitland Werner)

WASHINGTON, Jan. 29.—Edwin Meese 3d, in confirmation hearings on his nomination to be Attorney General, said today that he had met "ethical as well as legal" standards of conduct for public officials. But he said that he would do some things differently in the future to avoid creating "the appearance of impropriety."

Mr. Meese's comments came as the Senate Judiciary Committee reopened hearings that were postponed last year while a court-appointed independent counsel investigated him on charges of helping to arrange Federal jobs for people who had assisted him financially.

The counsel, Jacob A. Stein, found that Mr. Meese had not committed any criminal actions, but, as a matter of jurisdiction, did not address the question of whether his behavior was ethical.

Referring today to the special counsel's report, Mr. Meese said: "Reading these detailed facts, I believe, supports what I have always known to be the case, which is that I have conducted myself in accordance to the ethical as well as the legal standards of behavior for public officials."

Mr. Meese said the independent counsel's inquiry had "left no stone unturned" and had "found no basis for any of the allegations of improper conduct."

A SINCERE COMMITMENT

He added: "Although the year has been difficult for both my family and myself, I have nevertheless continued on the present course, not because I want some sort of personal victory, but rather because I have spent my professional life pursuing a since and deep commitment to improving the administration of justice in this country, and because I want to serve the country and the President, who twice has affirmed his confidence in me by nominating me for this position."

The Judiciary Committee today released a Jan. 14 staff memorandum of the Office of Government Ethics, which found that Mr. Meese, who has been President Reagan's counselor since January 1981, had committed several violations of ethical standards.

In their memorandum, the two staff lawyers, F. Gary Davis and Nancy Feathers, said: "There are two situations in which Mr. Meese violated the standards of conduct or other applicable statutes."

First, they said, he had violated "regulations applicable to the Executive Office of the President" by joining in senior staff decisions to approve John R. McKean, who had helped Mr. Meese obtain a $40,000 loan, for positions on the Postal Board of Governors.

APPEARANCE OF IMPROPRIETY

Also, they said, "Mr. Meese violated the agency gift standards" by accepting "Mr. McKean's forbearance on the interest due on the loan," because this was a "gift" as defined in the Ethics in Government Act. They added that "the appearance of impropriety created by his conduct runs counter to the agency's general standards of conduct."

In addition, the two staff lawyers said Mr. Meese had violated a regulation prohibiting Federal officials from creating an "appearance of preferential treatment" by approving the appointment to a Federal job of Thomas Barrack, who had helped in the sale of Mr. Meese's house in California.

The Judiciary Committee also released two letters to committee members from David H. Martin, director of the office, which contained an unexplained contradiction on a key point. In the first letter, dated Monday, Mr. Martin said he had rejected his staff's conclusion on two issues but concluded that Mr. Meese had committed one "violation of the standards of conduct," involving an appearance of impropriety.

In the second letter, dated today, Mr. Martin said he had decided that "there was no substance to the appearance problem" and thus no violation by Mr. Meese.

Mr. Martin's first letter accompanied a copy of the report that he furnished to the committee chairman Senator Strom Thurmond, with the understanding that neither the letter nor the report would be made public.

His second letter came in response to a request today from Senator Thurmond, Republican of South Carolina, and the ranking Democrat on the committee, Joseph R. Biden Jr. of Delaware, that Mr. Martin make the report public.

Mr. Meese's statement today contrasted with his insistence in the past that the only thing that he would do differently, given the opportunity, would be to remember to list a $15,000 interest free loan on his financial disclosure forms.

His failure to disclose that loan touched off the investigation first by the Justice Department, then by Mr. Stein, into 11 allegations against him.

Mr. Meese's statement came as Senator Biden began to question Mr. Meese's fitness, in terms of judgment and ethical standards, to be Attorney General.

Mr. Meese said he thought nothing he had done would appear improper "to an objective person," but that in the future "I would seek to avoid any circumstance that could be misunderstood or misconstrued in any way."

The new round of hearings into Mr. Meese's nomination promised to run longer than initially anticipated.

VOTE SOUGHT FOR THURSDAY

Although Senator Thurmond had said he wanted to limit the hearings to one day, he said today that more witnesses would be called tomorrow and that he would seek a committee vote Thursday.

The entire proceedings this morning were taken up with statements by committee members, signaling their viewpoint toward Mr. Meese's confirmation. Only one, Senator Howard M. Metzenbaum, Democrat of Ohio and Mr. Meese's chief opponent on the panel, announced that he would definitely oppose confirmation.

The Judiciary Committee only learned on Monday of the existence of the Office of Government Ethics report, through an article in The Wall Street Journal. In a letter he sent with the report today to Mr. Thurmond and Mr. Biden, Mr. Martin said he had not previously advised them of the report because, after study, he had determined that its conclusions were unfounded.

Under questioning today, Mr. Meese said that his lawyers had met with Mr. Martin to answer questions raised by the staff report.

He described his lawyer's meeting with Mr. Martin as "entirely proper" and as reflecting "due process of law."

Mr. Meese's lawyers became the focus of testimony a second time today when he was questioned regarding his application for reimbursement of more than $720,000 in legal fees arising from his defense during Mr. Stein's investigation.

New questions were raised today by Mr. Meese's testimony about his legal obligations. In response to Senator Charles McC. Mathias Jr., Republican of Maryland, Mr. Meese said that he had been contractually obligated to pay the fees he claimed under a "written retainer agreement" executed in June 1984, in the middle of the Stein investigation.

But when Senator Mathias asked what would happen if the court decided against the reimbursement, Mr. Meese said his lawyers had agreed to accept whatever the court rules they are entitled to receive.

It is not clear whether such an understanding could jeopardize Mr. Meese's right to reimbursement.

[From the Wall Street Journal, Jan. 7, 1985]

COMMON CAUSE VS. COMMON LAW

Just in time for today's return of Congress to Washington, the angels at Common Cause are enjoying one last dance on the pinpricked hide of Edwin Meese, Chairman, and head ethicist Archibald Cox recently issued a 37-page report urging that everyone ignore last September's 385-page investigator's report exonerating Mr. Meese.

Not to worry that independent counsel Jacob Stein and five deputy counsel interviewed 200 witnesses, and a grand jury questioned 45 witnesses, and both read libraries full of documents. They cleared Mr. Meese of all allegations of criminal improprieties.

Mr. Stein was careful to note that he could only consider the criminal charges, and wasn't empowered to report the "propriety or the ethics" of Mr. Meese's conduct. But obviously ethical judgments depend, or should depend, on the facts, which Mr. Stein found weren't there. Yet Common Cause harps on some of the same charges, which include failure to report a pair of cuff links given by South Korea a loan to Mrs. Meese by someone who later got a government job, and an extension on the Meese house mortgage.

The Stein report said there was nothing up Mr. Meese's sleeve on the cuff-link case, or when it came to the friend who made loans to Mrs. Meese and then got a government job "without the knowledge of (or any intervention by) Mr. Meese," or when the Meese mortgage was extended instead of foreclosed, which was "sound from a business point of view." It's not as if he was accused of breaking campaign finance laws or using a widow's trust fund for Meese family purposes.

What's really going on here is what's been going on ever since William French Smith resigned. Some people simply don't want an attorney general with the conservative views of Mr. Meese. Many of these apparently pay dues to Common Cause. Mr. Cox didn't let the Stein report facts get in his way. Even before the report was assigned, Mr. Cox was convinced that Mr. Meese violated "ethical mandates," and last spring sent a letter to all the senators saying so. So far, the anti-Meese lobby has managed to keep the attorney general's office vacant for almost a year, leaving in limbo some important programs of the Reagan mandate. Finally, Senate Majority Leader Bob Dole now says, "We've held Ed Meese hostage long enough."

One overdue reform for Attorney General Meese would be to end the Legal Services Corp., the American lawyers' version of UNESCO. The program was supposed to help the poor enforce their rights, but has been hijacked by social-engineering lawyers whose fascination is with redistributionist politics, not with the interests of individual poor people. Mr. Meese may also have some ideas for reducing the amount of litigations this country suffers, which accounts for a whopping 2% of GNP, more than steel.

The Senate Judiciary Committee hearings to confirm Mr. Meese are rescheduled for later this month. He is perfectly qualified for the job, as he was before the independent counsel's report, much personal torment, and a year ago.

Indeed, judging by the damage groups such as Common Cause would wreak on cherished legal principles, it strikes us that it may be important to have a chief law-enforcement officer with a victim's firsthand knowledge of the fragile nature of the rule of law. Consider this Common Cause argument. Despite the factual findings of the Stein report, the group only required its collective judgment to conclude that Mr. Meese lacks "ethical sensitivity," and so must never be attorney general. Each page from Mr. Cox must have the strength of 10 pages from the independent report because Common Cause hearts are so pure.

Consider what Common Cause would have us adopt as a new standard of proof. For example, the Cox report acknowledges the Stein finding that there was no link between the loan and the job, but concludes, "whatever his subjective motive, Mr. Messe did link by his actions" the loan and the job. "Subjective motive?" Common Cause is apparently relying on an "objective motive," an idea only a studied Marxist could understand. Since no evidence is offered to suggest any action by Mr. Meese to support a link between the loan and the job, this pathbreaking legal standard requires no proof.

The gist of the Common Cause argument makes a hash of the very concepts of guilt and innocence: Even though Mr. Meese did nothing criminal, there were allegations of criminal behavior, and the *existence of allegations* is fatal to Mr. Meese. In Mr. Cox's estimation, the controversy surrounding Mr. Meese means he can no longer "symbolize the highest standards of honor, integrity and freedom from self-interest." Mr. Cox and Common Cause of course were sources of many of these allegations in the first place. So political enemies can be quashed in three easy steps: Raise accusations, damage reputations, ignore vindications.

Neat.

But this procedure turns the major principle of common law inside out. The accepted ideas has been that people are considered innocent until proved guilty. The suggested reform from Common Cause, as applied to Mr. Meese, is that he's guilty after being proved innocent. A more proper verdict would be a speedy confirmation as attorney general.

[From The Wall Street Journal, Jan. 30, 1985]

MEESE DEFENDS LAWYERS' SUCCESSFUL BID TO HAVE ETHICS OFFICE REJECT REPORT

(By Andy Pasztor and Edward T. Pound)

WASHINGTON.—Attorney General nominee Edwin Meese defended as "entirely ethical and proper" his lawyer's successful effort to have the Office of Government Ethics reject a staff report accusing him of violating federal ethical standards.

But Mr. Meese also told the Senate Judiciary Committee, which was resuming hearings on his confirmation, that in the past he had been less "sensitive" to potential ethical or conflict-of-interest problems than he should have been.

Mr. Meese testified that when he learned of the staff report's existence, he instructed his attorneys to meet with two senior officials of the ethics office to answer "some questions that have been raised." He said David Martin, director of the office, was convinced by these discussions to disregard the staff conclusions because they were based on "factual errors" and a "misconstruction" of the meaning of the government's ethical rules. Mr. Martin has described the talks in similar terms. Neither Mr. Meese nor Mr. Martin has identified the other ethics office official who was present.

The report, made public last night, raises a new question. The lawyers who wrote the report said that Mr. Meese may have violated a federal law barring government employees from accepting gifts from other government employees. The report said, however, that it was unclear whether the law applied in the specific transaction they questioned.

Questions about the propriety of the discussions between Mr. Meese's lawyers and the ethics office officials, and about why Mr. Martin failed to inform lawmakers about the staff report's conclusions, dominated the hearing. Mr. Martin and the ethics office lawyers who prepared the report were scheduled to testify yesterday, but the committee postponed their appearances until today.

Responding to often hostile questions from some lawmakers, Mr. Meese blamed his incomplete record-keeping and incorrect financial disclosures on the hectic task of "starting in a new job in a new administration" in 1981. Mr. Meese said he would do "some things differently" in the future to "avoid any possibility" of impropriety or misinterpretation by critics.

Meanwhile Mr. Martin last night released to the news media copies of the 17-page report prepared by two of his office's lawyers, F. Gary Davis and Nancy Feathers. The committee received the report before yesterday's hearing. As previously reported, the lawyers concluded that Mr. Meese's dealings with two California men who got federal jobs violated government ethical standards.

But Mr. Martin, in a letter to Sens. Strom Thurmond (R., S.C.) and Joseph Biden (D., Del.), stressed that the staff report "did not represent the final decisionmaking act of this office, nor does it represent the final conclusion reached by its authors." A spokesman for Mr. Martin said that Mr. Davis and Ms. Feathers weren't available for comment. Mr. Martin released the report after repeated requests from the two senators, who are on the Senate Judiciary Committee.

The report, described by Mr. Martin as a "working paper," concluded that Mr. Meese violated federal ethical standards involving the 1982 sale of his California home. Thomas Barrack, a California businessman, helped finance the purchase of the home. But Mr. Martin, in his letter to the two senators, said the matter didn't present "even an appearance problem" because Mr. Meese wasn't aware "of any financial involvement by Mr. Barrack" at the time Mr. Barrack got a job with the Interior Department.

The other transaction that the report focused on involved John R. McKean, a San Francisco accountant, who was appointed to the U.S. Postal Board of Governors in 1982. Mr. Meese supported the appointment. One month before Mr. McKean's name first came up in the White House for the appointment, he arranged a $40,000 loan for Mr. Meese.

The report concluded that Mr. Meese's business transaction with Mr. McKean created "an appearance of using an official position to private advantage." The report also said that because Mr. McKean, after his appointment to the Postal Board, allowed Mr. Meese to defer payment of some interest on the loan. Mr. Meese may have "accepted a gift from a federal employee" in violation of a federal law and ethical standards.

But the staff report said it "is unclear whether this statute" was intended to apply to all federal employees. "If found to be in violation of this statute," the report said, "Mr. Meese would be subject to the only penalty listed, dismissal from service."

Mr. Martin wrote Sen. Thurmond and Biden that he initially felt the McKean matter "required further probing." But after reviewing the facts, Mr. Martin said that the financial arrangements between Messrs. Meese and McKean were "armslength transactions." He said that when Mr. McKean initially helped Mr. Meese, "there was no evidence that Mr. McKean was interested in, or even contemplated receiving, a federal position." Also, he said, the appointment was initiated by another White House official, Michael K. Deaver.

[From the New Republic, Oct. 7, 1981]

THE FORGOTTEN SIDE OF THE 1960'S COMES TO THE WHITE HOUSE—OFFICER ED MEESE

(By Jeff Stein)

By the 1960s, confounding Gertrude Stein, there was a "there" in Oakland, California. It was a vast, steaming ghetto; Black Panthers and violent rebellion; Bobby Seale and Huey Newton; the outlaw Hell's Angels; the hippies and the radicals on Telegraph Avenue. Edwin Meese III, a young deputy district attorney, lived in Oakland then too. But his was a different city and a different decade. Meese's neighborhood was the Oakland of the East Bay Hills, the placid part of town where the postman watched the family grow and the house add a wing, where the kids left their bikes outside all night. It was an Oakland that seemed carved out of Wisconsin and plunked down on the hills above the San Francisco Bay. In the popular chronicles of the 1960s, that Oakland plays only a cameo role. The books and articles and movies recall the Panthers, the free speech movement, People's Park, acid, sex, and Country Joe and the Fish—a time of protest and experimentation, draft resistors and apocalyptic fantasy. But it is Ed Meese—along with the other cops, prosecutors, and California law enforcement planners who worked the forgotten side of the 1960s—who is in the White House today.

Like the Reagan presidency, the Reagan governorship cut social welfare budgets, attacked legal services, and adopted strong law-and-order rhetoric and programs. And because the political landscape had been relatively serene for the past half-decade, it is sometimes assumed—especially in Washington—the campus protest, labor unrest, and race riots have permanently gone, never to return. Yet the potential for unrest exists. The introduction of only a handful of American advisers into El Salvador brought 100,000 demonstrators into the streets last May. A quarter of a million turned out for the Solidarity Day march on September 19. There is widespread sentiment for a new draft as the Reagan military commitment deepens. There is muted support for internal security investigation and covert action from within the Republican party. The first round of budget cuts, along with rises in fuel prices, inflation, interest rates, and unemployment in the industrial north, could result in social upheavals and a higher crime rate. How would the Reagan administration handle it? The outlines of a presidential program for combating crime are only just beginning to emerge, but the record of the governorship provides a wealth of clues for the future.

It was Meese's record for prosecuting pot smokers and student protesters around Berkeley that brought him to the attention of Governor Reagan. It was Meese who dealt most directly with the riots and protest that shook California in the 1960s and 1970s and who helped the state develop an enormous law-enforcement establishment. And it is Meese who will be charged with developing a similar national program for the 1980s. "You always have to view Ed in the context of his father, who fits the classic image of the public servant," said Robert Wallach, a close Meese friend and San Francisco attorney. "I think Ed's attitude toward criminal justice is rooted in a sense of orderliness about society. He really believes in what we cynically call the basic American values. The Meeses are a very simple family in the sense of their material wants. They say grace before every meal. They're the prototype of the Norman Rockwell America."

The Meese name was well known in Oakland long before young Ed became a prosecutor. His paternal grandfather was an Oakland city councilman and treasurer. His father was Alameda County's treasurer and tax collector for a quarter-century. And before he married her, Ursula Herrick Meese had been a probation officer. Her father was an Oakland postmaster. "Finding someone around here who doesn't like Ed Meese," a senior California police officer told me with a laugh, "must be like trying to find a four-year-old who doesn't like Santa Claus." Even Jerry Brown's aides were astonished at the reputation Meese left behind in Sacramento, where he was a senior Reagan aide beginning in 1969. "It's funny," said one, a former antiwar activist. "After seven years, I'm sure the head of this department doesn't know the name of a single secretary. But Meese made sure he knew them all. And they remember it. They still love him."

Most people described Meese as a cool, professional conciliator. "If he had a temper, I never really saw it," said California deputy attorney general Roger Ventura. Other law enforcement officials gushed about Meese. "A renaissance man," Bill Medigovitch, a California intelligence specialist, called him. "It was like he was earmarked for destiny." Under Meese's direction, California gobbled up millions of dollars in Nixon-era "crime-fighting" funds. "To this day," Medigovitch said, "we owe him a great deal. We have radios and equipment the state ordinarily wouldn't have, and an ability to communicate tactically."

"I intensely respected Meese," said Charles Gaines, well known as the liberal police chief of Oakland and, later, San Francisco. "Philosophically, we're in different camps, there's no doubt about that. But what disturbs me now is that he is in such a high office, and when he speaks one might assume he is speaking Reagan's philosophy. Now, what does that portend for the future? I don't want to see the exclusionary rule done away with. I don't want to see the ACLU done away with. If anything, they're going to be more needed in the future." Indeed, Meese has already rung a few bells to alarm civil libertarians. In an address to a police convention in California last May, he labeled the American Civil Liberties Union "a criminals' lobby." He favors abolition of the exclusionary rule, which forbids the use of illegally obtained evidence in court. He is for preventive detention, against lawyers and judges who "deliberately and definitely thwart" police. There is little new here. Meese has held these positions for 20 years. "He's a former attorney with strong feelings about law and order," former Nixon aide Herbert Klein, now editor of the *San Diego Union*, told me.

Gaines' respect for Meese emerged from the working relationship they established during antiwar demonstrations aimed at closing access to the Oakland Army base. Gaines—and others—remember heated strategy sessions in which cops and other law enforcement personnel vented their outrage at students who were challenging the war effort. To them, it was a battle of patriots against traitors. But Meese firmly reminded the rank and file that the role of the police in controlling demonstrations must be limited strictly to enforcing the law, and that passions over the war issue had best be kept in check.

Such coolness in the kitchen may have come from Meese's longstanding interest in controlling civil disorder. After graduating from Yale in 1953, he joined the Army and was assigned to an artillery unit in Oklahoma. Soon, as a lieutenant, he joined an intelligence unit, beginning a more than 20-year association with military intelligence. When Meese entered law school a few miles up Telegraph Avenue in then-placid Berkeley, he joined a reserve intelligence unit and remained active in it until late last spring. Eventually, Meese attained the rank of lieutenant colonel.

Robert Wallach was a classmate, friend, and moot court team colleague of Meese's. "Law school was not his first priority," Wallach said. "We all knew he was a very bright guy, but he didn't seem to have the same sense of intensity about law school as the rest of us. First, it's not Ed's temperament to be intense about anything. But beyond that, I think Ed viewed the law as a vechicle for entering the criminal justice arena. Meese seemed to spend most of his time on resolution related issues. "I enjoyed it," Meese told Connie Bruck of the American Lawyer last February. "It was fascinating to me. Some people have other hobbies. That was one of mine." He also collected toy pigs. Today toy police cars are displayed on the living room mantle of his house in McLean, Virginia.

As deputy district attorney, Meese was a cop's idea of prosecutor, a Kojak-in-the-court-room who liked to ride the city streets at night in a squad car. He often stopped to gather intelligence or to give pep talks to police patrolling the ghettos of east and west Oakland. In the prosecutor's office, Meese developed a reputation as steady, quiet, and fair—unconcerned with headlines. He was comfortable with the hustling corporate style of the Reagan governorship. He signed on as extradition and clemency secretary, and quietly turned that minor position into a base for a law enforcement empire.

But the road from Oakland to Sacramento had first passed through Berkeley. By the time the free speech movement exploded in 1964, Meese had started to spend an increasing amount of time in Sacramento as a lobbyist for the California District Attorneys and Peace Officers Association, pressing harsh penalties for drug dealers and elimination of exclusionary law. From Oakland, he watched the student protest movement gain momentum. Around the same time, attorney Robert Treuhaft received a letter from Mario Savio to represent the students. Meese and another deputy DA, Lowell Jensen (now head of the Justice Department's Criminal Division), arrived. According to Treuhaft, "Meese called Governor [Pat] Brown—they were fed up with [university president] Clark Kerr—and said the situation is out of control and we can't be responsible. And they asked for the National Guard. I was just talking to them on a friendly basis, and then I started to leave. And as I passed the press office, I saw that the sheriff of the county was having a press conference. I heard Meese say from behind me, 'Sheriff, there's somebody here who's not a member of the press.' So I said to him, 'That makes three of us.' But he was not amused. They pushed me into the office and handcuffed my arms behind me. There hadn't been any arrests until then. And Meese was the one who said to the sheriff:

'Arrest him.' Treuhaft says he was taken to jail, charged with trespassing and disorderly conduct, and denied bail. "I had an impression," he recalled, "of ice water in his veins.

"Meese came to Reagan's attention when he was prosecuting Berkeley students and pot smokers and putting radicals in jail," said Gordon Brownell, a former Nixon White House staffer and campaign aide to Reagan. Herbert Ellingwood, who is now a Reagan White House counsel, told Connie Bruck, "Reagan really wanted to do something about the college problems and the drugs." A former California Department of Justice intelligence officer who worked closely with Meese said that accurate intelligence was his prime tool: "He's a crisis man—he never seems to perspire." Reports from informats would be passed to Meese from various police agencies, then on to Governor Reagan. "Ed's primary responsibility was to keep the governor informed," he explained. Timely intelligence enabled Meese to implement the tactic of identifying protest leaders and removing them from the scene. During draft board demonstrations in the Bay Area, the former intelligence officer, now a southern California prosecutor said, "Ed devised a plan . . . to develop a prosecutable case against those who were committing the violence, particularly the leaders. . . . In the midst of the riots, these people would be arrested and snatched right out from their friends, and nobody knew why. It would have a demoralizing effect and bring things to a screeching halt."

The strategy was used successfully against antiwar demonstrators at San Franciso State University. "Ed came down the day after [S.I.] Hiyakawa [president of San Francisco State, now U.S. senator] was appointed, and we revised the draft board plan. We identified 17 people in the commission of various crimes. We went down to the DA's office and signed the complaints and over the next few weeks arrested all of those people. Eventually, 15 were convicted. But the point is that within a week, that school had settled down, and it was primarily Ed's direction on how to handle this thing, and it went like clockwork. I had argued that we arrest them en masse, but Ed pointed out that that would only escalate the situation, and he was right."

As Reagan's chief of staff, Meese fueled the state's crime programs with millions of dollars from the Nixon administration's Law Enforcement Assistance Administration. He also mapped out welfare cuts and the campaign to truncate legal services for the poor. The attack on legal aid begain with Reagan's 1970 veto attempt to seize control of the budget of the California Rural Legal Assistance program. Two years before, the federal Legal Services Corporation had named its California branch the nation's "outstanding legal services program." To the Reagan team, then as now, it was a hotbed of publicly funded social agitation. They named Lewis Uhler, a former state public relations director for the John Birch Society, to ride herd on it. Uhler hired a staff of former CIA, FBI, and police officers, who wrote a report charging CRLA lawyers with fomenting violence and racial unrest in California schools and prisons. Frank Carlucci, then head of the Office of Economic Opportunity, and now deputy secretary of defense, appointed a committee which evaluated the Uhler report as "totally irresponsible," and found that CRLA had acted in good faith and in its clients' interests. Bob Gnaizda, then a CRLA attorney struggling with the Reagan team, said, "If any one person in the Ronald Reagan administration should be credited with the attack on legal services, it's Ed Meese."

On February 10, 1969, Governor Reagan stepped to a podium and set the customary pile of index cards before him. In the rows below were 500 military and civilian officials, including members of the California National Guard, the California Highway Patrol, town and city police officers, commanders from the Sixth U.S. Army headquarters in San Francisco, and high-ranking utility executives. Reagan joked that if his political enemies could see him now, they'd think he "was planning a military takeover." To those who got wind of it six years later during the Church committee investigations, it seemed that way. Reagan was addressing a closed strategy session for "Operation Garden Plot," a federal plan for martial law in case of civil disorders. The California version was code-named "Cable Splicer." Paper war games were carried out under the names "Quiet Town" and "Gram Metric." The plans, kept tightly under wrap, called for military occupation of cities and towns and the neutralization of "dissident elements," which included "civil rights movements," "anti-Vietnam-antidraft movements," and "subversive conspiratorial aspects."

Reagan wound up his 1969 speech by noting that the plans were part of a "6,000-year history of man pushing the jungle back, creating a clearing where men can live in peace and go about their business with some measure of safety. . . . Of late, the jungle has been creeping in again a little closer to our boundaries." Two years later, the planning group met again in Sacramento and Reagan opened with another jest:

"I don't exactly know whether to say I am meeting here with you, greeting you as a convention—or whether we are engaged in a criminal conspiracy."

Governor Reagan's lighthearted remarks masked a serious commitment to "big government" when it came to law enforcement. When Meese was elevated to chief of staff in 1969, he chose Herbert Ellingwood, a fundamentalist Christian and old friend, to succeed him as legal affairs secretary. Meese and Ellingwood then established the Office of Criminal Justice Planning to funnel federal law-enforcement funds into the State. "OCJP," said former legislative analyst Alan Post, "became a grab bag for every sheriff." Another top official adds "It had a religious flavor to it." By 1974 the OCJP was employing 230 crime-fighting bureaucrats in "Project Safer California." Two million dollars was spent on the initial "goals and standards" study alone. And $60 million was spent in a single year on helicopters, mace, special helmets, and other hardware. Special schools were established offering advanced courses in terrorism, drawing police from all over the U.S., Canada, and Mexico. This expensive effort did little to prevent crime. When Jerry Brown became governor in 1976, one of his first acts was to cut the OCJP's staff to fewer than 50. The LEAA itself was finally abolished during the Carter administration.

International terrorism still fascinates many in the Reagan camp as a challenge to domestic tranquility, although cooler heads, including that of FBI director William Webster, dismiss it as a significant factor in domestic law enforcement planning. Nevertheless, a number of Republicans say action is needed against American radical terrorists. In a 1979 Republican National Committee study paper, Richard Allen, now the president's national security adviser, recommended the creation of a new joint FBI–CIA task force on domestic terrorism. According to FBI sources, Meese himself has unsuccessfully lobbied Webster to put aside the white-collar crime focus of the Carter years and devote more attention to both terrorism and street crime.

An intimate friend of Meese disputes the notion that Meese wants to start harassing radicals. "That's not true," the man said emphatically. "I know his attitude on the subject. I know that he does not favor the resumption of McCarthyism or the House Un-American Activities Committee." During the transition period, the friend says, Meese really wanted to be director of the FBI. The only other job that appealed to Meese, he said, was secretary of defense.

Meese has brought in one of his partners in California crime-fighting, Louis Giufreda, to run the Federal Emergency Management Agency. Giufreda is a senior California National Guard officer. He headed the school that specialized in antiterrorist courses during the Reagan governorship, the California Specialized Training Institute, in San Luis Obispo. Although FEMA is chartered only to cope with floods, nuclear civil defense, and the like, Giufreda retains his interest in terrorism. According to sources in the FBI, Giufreda and other new FEMA officials have been lobbying the White House and Congress for "an alternate force" to deal with terrorism, using examples such as the assassination of an Iranian dissident in the Washington suburbs last year, and even the attack on Reagan himself, to argue that the Secret Service and the FBI cannot do the job by themselves. The FBI, they say, has been paralyzed with guidelines. In the face of FBI statistics showing a drop in terrorism, the lobbyists, according to one Justice Department official, are doing "a quietly effective job" of convincing those who will listen that the Soviets have made important inroads among US radicals.

Under Giufreda's stewardship, FEMA has just established a new department, the Disorder Consequences Division, whose function has yet to be clearly defined. The National Firefighters Academy, in rural Emmitsburg, Maryland, has been quietly selected as the site for a new Emergency Training Center. Fred Villella, a former chief of the "Academic Division" of the California Specialized Training Institute, has been chosen to run it.

The Reagan governorship escaped the kind of blistering scrutiny that was directed at the Nixon White House over intelligence gathering. But beginning in 1970 (and perhaps earlier), Reagan got weekly intelligence reports on activists such as Tom Hayden, Jane Fonda, and Joan Baez, and groups such as Amnesty International, the Black Panthers, and the Jewish Defense League. The reports were generated by then attorney general Evelle Younger's Organized Crime and Criminal Intelligence Branch to some 44 top aides and law enforcement officials in the Reagan team. Rumors of the intelligence gathering persisted for years while top officials denied them.

During the Reagan governorship, the OCCIB also became the hub of an unofficial network of local police and intelligence agents across the country known as the Law Enforcement Intelligence Unit, in which Meese played an active role. Founded in 1956, the LEIU from the beginning secretly gathered and exchanged information on civil rights, antiwar, and antinuclear activists. Utility companies also received the information, which was processed through a federally supported computer in East Lansing, Michigan. The OCCIB gave it financial support, with money budgeted for "printing LEIU cards, intelligence bulletins, and records," according to a 1972 internal funding report. Yet through the years, top LEIU officials denied the existence of political intelligence gathering. In 1976 Younger stated: "The department does not keep any files for political purposes"; and no official contradicted him.

At the end of Reagan's governorship, Meese briefly joined Rohr Industries, a northern California firm which built equipment for the San Francisco and Washington subways, as vice president for administration. But he soon returned to his home in La Mesa, California, to practice law and teach at the University of San Diego, a conservative Catholic school. There, with financial contributions from Richard Mellon Scaife and other conservative givers, he helped establish the Center for Criminal Justice Policy and Management, and became its director. Soon after he entered the White House, Meese returned to San Diego for a colloquium on "The Responsibility of Government" at the law school. He was asked: "How do you define the legitimate role of government in today's society?" He replied:

I think one of the things that governments historically, going back to the earliest civilizations, have been established to do is to protect the people from those among them who would hurt others or exercise their depredations on others, and also to protect them from external threats—other countries who might seek to invade or otherwise try to work their will upon a peaceful world. And I think this is something that I think we forget. We are so interested in government doing a lot of things that government was never intended to do, you forget about its first responsibility to protect the public. And I think that is where a lot of the orientation about the future really needs to be.

Meese's summary of the things government has a duty to do is all right as far as it goes, but it is extraordinarily limited. It recalls two of the admonitions of the Preamble to the Constitution: to ensure domestic tranquility and to provide for the common defense. But it leaves out the others: to establish justice, promote the general welfare, and "secure the blessings of liberty to ourselves and our posterity." It is the summary of a cop or a soldier, not of a statesman.

Last January, Meese assured the Heritage Foundation, a conservative think tank, that he would "rely heavily" on a report it had submitted to the new administration recommending that the government and Congress be "unleashed" to investigate "clergymen, students, businessmen, entertainers, labor officials, journalists, and government workers who may engage in subversive activities without being fully aware of the extent, purposes, or control of their activities." To close associates, Meese's offhand imprimatur on the Heritage Foundation was merely a good game of politics. In this and other ways, the Reagan-Meese White House has tended to humor its supporters on the outer fringe. But as the Eisenhower administration learned when it humored Joseph McCarthy until he attacked the U.S. Army, that can be tricky.

Still, liberals seeking a cardboard villain in the Reagan administration will have to look elsewhere. In the White House, Meese has functioned smoothly as part of Reagan's "troika" of top assistants, along with chief of staff James Baker and deputy chief of staff Michael Deaver. He is, by all accounts, a nice guy. He remains one of the kind of cop who has a friendly word for everyone on his beat and is just the man to get a kitten out of a tree or take a lost toddler home to its mother—even if he's not likely to waste much kindness on anyone who steps out of line.

But Ed Meese is no longer just a law enforcement official. He is a powerful national and international figure whose views help guide those of the president on issues ranging from food stamps to foreign policy. His charter has expanded enormously since his days in California. Whether his vision has similarly expanded is far less certain.

Jeff Stein, a former U.S. Army intelligence case officer in Vietnam, is Washington correspondent for the *Progressive*.

[From the Washington Times, Jan. 30, 1985]

DEMOCRATS USE ETHICS REPORT AGAINST MEESE

(By Ed Rogers)

Democrats found new grounds for opposing the nomination of White House Counselor Edwin Meese III for attorney general yesterday in an Office of Government Ethics memo that cited him for two ethics violations.

Chairman Strom Thurmond, R-S.C., of the Senate Judiciary Committee, said that David H. Martin, director of the office, would appear as a witness today to explain his reasons for overruling the two staff lawyers who drafted the memo.

The memo was based on a review of an earlier report by Jacob A. Stein, a court-appointed independent counsel, who ruled that Mr. Meese was not guilty of any criminal wrongdoing during a period of financial difficulties.

The confirmation hearing, recessed since last March pending completion of that investigation, was expected to be a one-day affair until word of the staff memo in the Office of Government Ethics leaked out this week.

The staff lawyers cited Mr. Meese for taking part in decisions to give political appointments to John McKean, who arranged loans for him totaling $60,000, and to Thomas A. Barracks, who arranged the sale of the Meeses' California home.

Mr. McKean, Mr. Meese's accountant, was appointed to the Postal Board of Governors, and Mr. Barrack, a California real estate developer, was given a position in the Interior Department and later in the Commerce Department.

Mr. Meese, under intensive cross examination by committee Democrats, said the McKean loan was an "arms's length" business deal and that he was unaware that Mr. Barrack had contributed some of his own funds to the house purchase.

"You thought that was a customary loan?" asked Sen. Howard Metzenbaum, D-Ohio, a leading committee opponent of the Meese nomination. He noted that Mr. McKean deferred interest payments and required no collateral.

"It never crossed my mind," Mr. Meese replied. "There was no connection, nothing of value."

Mr. Metzenbaum asked if the assistance from Mr. Barrack did not represent a conflict of interest that is forbidden by government regulations.

"That is all irrelevant unless I knew Mr. Barrack had put money into the transaction." Mr. Meese replied. "I had no knowledge until the hearing in March 1984."

Mr. Meese said that neither he, Mr. McKean nor Mr. Barrack had envisioned any of the political appointments when the transactions were made. He added that he only helps review appointment decisions and never makes recommendations.

Sen. Dennis DeConcini, D-Ariz., referred to favored treatment Mr. Meese received in much larger loans, on which he got far behind in payments until he finally refinanced them by mortgaging his new home near Washington.

The combination of favored treatment from lenders who later got political jobs would be likely to give Mr. Meese a bad public image as attorney general even if he were not guilty of any ethical violations, Mr. DeConcini said.

"What will you do to overcome the image so that there will be conficence in that office?" the senator said. "I think the American people will conclude that this man doesn't have to make payments because he knows important people."

"Most Americans have to make their mortgage payments," Mr. DeConcini added. "It troubles me that people will say, 'He got away with it for a time. He's OK now, or is he?' "

Sen. Patrick Leahy, D-Vt., asked about $10,000 that Mr. Meese received from a Reagan transition trust fund, first labeling it reimbursement for "moving expenses," which some thought was illegal, and later as a consulting fee.

Mr. Meese said he changed it to a consulting fee after being advised the claim for moving expenses might cause trouble.

"Presto chango—now it's a consulting fee!" the senator said.

"At the time I received it, I had no idea there was anything wrong with it," Mr. Meese said.

"You didn't return the money, only changed the records?" asked the senator.

"Under the circumstances, I was entitled to be compensated and reported it on my income tax," Mr. Meese said.

Democrats and Republicans alternated in questioning Mr. Meese, and the recurring shifts in the tone of the hearing was a decided one. All the Republicans were friendly toward the nominee.

"I don't intend to be interrupted," Mr. Metzenbaum said.

At one point, Sen. Orrin G. Hatch, R-Utah, and then Sen. Thurmond, interrupted Mr. Metzenbaum to object to the way he was phrasing his questions to Mr. Meese.

Sen. Alan K. Simpson, R-Wyo., pointed out that Mr. Meese had paid a heavy penalty in getting out of financial difficulty caused by being unable to sell his California home for a long time, "paying interest on interest."

"This guy paid through the nose. A lot of people would like to lend him money," Mr. Simpson said.

In an opening statement, Mr. Meese pledged that if his nomination is confirmed, he will "do everything in my power to uphold the Justice Department's distinguished history of dedicated service to the nation."

"I pledge to you that I will do everything in my power to bring credit to the office of attorney general," he said.

During the Democrats' questioning on Mr. Meese's financial dealings, he said: "Some of the things, if they occur in the future, I would do different. I would seek to avoid any circumstance that could be misunderstood."

Mr. Meese had ready answers for most questions and during the entire hearing never appeared to become angry or thrown off balance by the unfriendly questions.

"I want to commend you for your dignified and restrained manner and frank manner with which you have answered the questions today," Sen. Thurmond said as he recessed the hearing after Mr. Meese had testified for nearly four hours.

[From the Washington Times, Jan. 30, 1985]

MEESE PARRIES THRUSTS AND MAINTAINS POISE

(By Thomas D. Brandt)

Clouds lingered yesterday over Edwin Meese, and Democrats in the Senate Judiciary Committee tried to conjure them into a thunderstorm.

But sprinkles fell on the Republican parade.

More thunder—with wind and more sprinkles—is expected today and tomorrow, when the committee, which appears to be leaning in Mr. Meese's favor, expects to vote.

The entertainment didn't start until late in the day for those who had come to see what they hoped would be the first big partisan donnybrook of the 99th Congress.

The long, green felt-covered witness table was the one big slash of color in the packed hearing room. Mr. Meese, a button-down blue shirt setting off his tan, set attentively with his hands crossed on the felt throughout the morning as one senator after another read mostly from prepared texts.

To a man, Republicans praised him—"a man of character" said Sen. Orrin Hatch of Utah—while Democrats raised questions about his judgment and personal ethics.

There was no Democratic praise. "Ethical malfeasance" was an expression used by Sen. Howard Metzenbaum of Ohio, who is Mr. Meese's staunchest opponent on the panel, while Sen. Edward Kennedy of Massachusetts could elicit little response from Mr. Meese about the statistic that the Reagan administration has so far appointed only two blacks out of 185 judicial appointments.

"I really find it incredible that you wouldn't find that statistic incredible," Mr. Kennedy said in a sharp line of questioning yesterday afternoon. "I want to know, Mr. Meese, whether the people of this country are going to consider that the federal judiciary is for white males only," he said.

"Senator, I am troubled if there is any group that appears to be underrepresented," Mr. Meese replied. "I think you have to look at the people who have been looked at and the ones that have been found qualified.

"I think it's very important that this administration, and certainly I, if I am confirmed by the Senate as attorney general, will make the greatest search to try to find as many qualified people from all minority groups for presentation to the president for judgeships."

Behind Mr. Meese sat his wife, Ursula, several other family members and his son, Michael, an Army captain, who came in uniform.

Mr. Meese parried thrusts about his personal ethics but maintained his poise while Republicans praised his integrity.

Sen. Pete Wilson, R-Cal., who has known Mr. Meese for years when both lived in California, said Mr. Meese has made many sacrifices in a life that has been devoted to public service. The Meese family, Sen. Wilson said, have "a lot more character than they have money in the bank."

In his opening remarks, Sen. Jeremiah Denton, R-Ala., told Mr. Meese, "I respect you as much as anyone I've met in government."

From comments by Democrats, it was clear that some, while unhappy with Mr. Meese, would use the hearing to pressure him for concessions on issues such as the Legal Services Corporation, which the administration has tried to abolish, but finally vote to confirm him as attorney general.

The long-held view in Congress, "that the president deserves his own man"—a person who will implement the policies the president campaigned on—is clearly accepted by most senators.

Surprisingly little was made of a confidential staff memo, first reported in The Wall Street Journal on Monday, that a staff draft prepared in the Office of Government Ethics said Mr. Meese had committed two ethics violations.

The 17-page internal memorandum, released publicly late yesterday, concluded that Mr. Meese's financial dealings with two men who later got federal jobs were in violation of federal conflict of interest regulations.

Its findings, however, were rejected by the head of the ethics office, David Martin, who said he was satisfied by the explanation of Leonard Garment, attorney for Mr. Meese, that his client had acted properly.

[From the Washington Times, Jan. 30, 1985]

THE "WATCHDOG" WHO SUCKS EGGS

(By Wesley Pruden)

Ed Meese could take some small comfort yesterday when he looked up to see the face of a familiar tormentor, sniffing for blood.

Despite the brutal and expensive campaign by Common Cause to so shred the reputation of Mr. Meese as to scuttle his chances to become the attorney general, the Democratic establishment in the Senate signaled that it was unwilling to join Howard Metzenbaum, one of their least-liked colleagues, in his relentless vendetta against the nominee.

Several of the Democratic senators would prefer another man to be the attorney general, but seemed willing nevertheless to let Mr. Metzenbaum—"the lonely Doberman," in one characterization—attack Mr. Meese with only perfunctory assistance.

Mr. Metzenbaum's attack struck most of those in the chamber as remarkably mean and personal. "Unless political cronyism and ethical blindness are prerequisites for attorney general," he said, "the Senate should reject the president's unfortunate choice."

This line of attack was surprising for several reasons. For one, the sarcastic language taunted those senators who intend, despite Mr. Metzenbaum's own moral misgivings, to vote to confirm Mr. Meese. Mr. Metzenbaum implied—or other senators might reasonably infer—that he was accusing senators who vote for Mr. Reagan's choice of voting for "political cronyism" an "ethical blindness".

It was a surprising line of attack because Howard Metzenbaum himself must struggle constantly to stay afloat in a sea of sneering disdain for his own "cronyism" and "ethics" in a chamber that has traditionally been loathe to judge harshly its members accused of sleaze.

His own passage to Washington was bumpy.

Mr. Metzenbaum arrived in the capital in 1973—after a losing race against Robert Taft, Jr. in 1970—by appointment of a Democratic governor to succeed William Saxbe, who has been named attorney general in the second Nixon cabinet. Ohio voters bounced him out the next year, and he was not actually elected to the Senate until 1976.

As the Senate's self-appointed "watchdog" for moral infractions, he has distinguished himself mostly, as one rural congressman observed yesterday, "as not so much a watchdog as a dog that occasionally gets caught sucking eggs."

Mr. Metzenbaum had more or less successfully lived down shadowy and unsavory associations in his Cleveland past, and became embroiled in his most spectacular "moral" controversy only last year while he was in the midst of his first pursuit of Ed Meese.

His hometown newspaper—the Cleveland Plain Dealer—disclosed that Mr. Metzenbaum took a $250,000 "finders fee" for his part in the sale of the Hay-Adams Hotel in Washington. The senator said he had made a couple of telephone calls to put buyer and seller together.

But the seller was an old friend and source of campaign funds; the buyer was a man who was already trying to buy the hotel. Speculation grew about what the money was actually to pay for.

When Mr. Metzenbaum, a lawyer, heard that the Cleveland newspaper was about to report that he was to be investigated for brokering real estate in the district of Columbia without a license, Mr. Metzenbaum quickly returned the money—plus $25,000 in interest.

Soon after that, the senator—who had mercilessly grilled Mr. Meese about how six of his friends and associates got their government jobs—admitted that he had intervened when his nephew was about to be fired from his job with the Immigration and Naturalization Service.

The senator sought to have the nephew transferred to a job where he wouldn't have to try to learn Spanish.

Mr. Metzenbaum didn't save his nephew's job, but the immigration service fired another young man—improperly so, according to a federal examiner—to make the firing of the Metzenbaum nephew "look good."

At the end of the yesterday's testimony, only Mr. Metzenbaum announced he would vote against Mr. Meese—who, he said, lacks "integrity."

Other Democrats may, in fact, join Mr. Metzenbaum in opposition, but unless they can delay the vote—give the sharks time enough to gather for the classic Washington ritual—they seem unlikely to prevail.

Ed Meese may owe Howard Metzenbaum one.

[From the Washington Post, July 13, 1981]

CIA DOUBLESPEAK CLOAKS PROPOSALS FOR HOMESPY AND DATAHIDE

(By George Lardner, Jr.)

At a breakfast with reporters last March, Edwin Meese III, counselor to the president, stated flatly that the Reagan administration would not permit the CIA to spy on U.S. citizens here at home.

"The White House is absolutely opposed to the CIA becoming involved in domestic spying," Meese said. "We are not going to put the CIA into domestic espionage or the FBI into foreign intelligence."

Now comes a proposed executive order that would allow the CIA to infiltrate and influence domestic organizations, to conduct covert operations in this country, and to "collect, retain or disseminate information" about law-abiding Americans for a variety of new reasons.

Meese also held forth earlier this year on another topic involving U.S. intelligence; government secrets and their classification.

"I think there is way too much classification," Meese told The Washington Post in an interview published in July. " . . . I think that's one of the problems of government—that is, the overclassification of documents. You really should only classify something if its revelation would actually harm national security."

Now comes the somewhat refined draft of another executive order, this one for handling national security information.

It would eliminate the current rule saying that a document should not be classified unless its unauthorized disclosure would cause "identifiable damage" to the national security.

It would make the "Top Secret," "Secret" and "Confidential" stamps mandatory rather than discretionary.

And it would turn the existing reasonable-doubt standard upside down by telling officials to keep information secret whenever they have a "reasonable doubt" about the need to do that.

So what's going on here? Is the Reagan White House saying one thing and doing another? Has Ed Meese changed his mind?

The answer appears to be straight out of George Orwell's Ministry of Truth. The proposed executive order for the CIA and the other intelligence agencies, according to administration officials, does not really mean what it says. Nothing in it, according to administration officials, would expand the CIA's ability to engage in domestic espionage.

Criticisms of the draft decree, by the same token, are being assailed from the highest quarters as despicable "propaganda." News stories regarding CIA domestic spying have been labeled "deliberately misleading." The publicity, as Orwell's Newspeak dictionary would put it, has been "doubleplusungood" and in need of "rewrite fullwise."

"As soon as all the corrections which happened to be necessary in any particular number of the Times had been assembled and collated, that number would be reprinted, the original copy destroyed, and the corrected copy placed on the files in its stead. This process of continuous alteration was applied not only to newspapers, but to books, periodicals, pamphlets, posters. . . . Day by day and almost minute by minute, the past was brought up to date." Orwell, 1984.

As for the proposed presidential proclamation to establish new classification practices, that, too, officials say, is being misread.

"I'm not saying you're going to have less classification under this order," says the man in charge of the drafting, Steven Garfinkel, director of the executive branch's Information Security Oversight Office. "But from my perception, the draft order is not intended to increase the material that's classified by any appreciable amount."

The key word is "intended." Apparently, Garfinkel is expecting government classifiers to continue to act pretty much the way they've always acted, classifying about as much as they usually do—which is to say too much. Garfinkel said many of the proposed changes from the existing order, issued by President Carter in 1978, were made primarily to get around court rulings and litigation "problems" concerning what should remain classified and what should not.

But then doesn't the new proposal have at least the potential of vastly increasing the amount of classified documents in the government's domain? Garfinkel was asked.

Garfinkel said he would rather not say.

The classification order is still weeks away from Reagan's desk. But the new order on intelligence activities, perhaps revised as a result of criticisms and suggestions from the House and Senate intelligence committees, is expected to be signed by the president at any moment.

At briefings for the committees, CIA officials have reportedly insisted that their plans for domestic activities are really quite modest and limited. But they have yet to offer a clear explanation of why the language in the proposed orders that has leaked out thus far has been so broad.

"They just say, 'well, that's what our lawyers worked out,'" said a congressional source.

Democratic lawmakers have expressed alarm. Sen. Walter D. Huddleston (D-Ky.) wrote the president of his concern that, under the draft submitted for congressional comment, "CIA activities in the United States have the potential to increase drastically." House Intelligence Committee Chairman Edward Boland (D-Mass.) said the proposal would tread on "longstanding tradition and policy" against CIA spywork in this country.

GOP lawmakers appear to have picked up the CIA theme that the changes have been "exaggerated" in the press and that the House and Senate intelligence committees will be ever ready to ward off any excesses. "Trust us" in the underlying theme.

Huddleston, on the other hand, was under the impression that the White House or at least Ed Meese, was on his side, the side of restraint. A veteran of the Church committee investigations of the mid-70s that focused on a stunning, and uncontested, catalog of CIA misdeeds, Huddleston, in his letter to the president, specifically cited Meese's remarks at the March breakfast.

Meese could not be reached for comment. His spokesman, Jim Jenkins said "there is a conflict between what he has said and the drafts that are circulating," but it is not at all clear that Meese sees it that way.

Witness, for example, this exchange at a presidential luncheon with out-of-town editors Oct 1. One editor asked how the proposed executive order, and other changes in the works, squared with Reagan's pledge to "get the government off the backs of the people."

The president let Meese do the talking. "I'm sorry. I'm eating." Reagan explained.

"Let's talk about the CIA, because that's easy," Meese declared. "There is absolutely nothing in the proposed intelligence order which wil expand the ability of the CIA to engage in domestic spying. That is totally false, and it's propaganda being put out by some staffers on the Hill who were part of Frank Church's infamous intelligence committee that was so destructive of our intelligence authorities some years ago."

It seems there are quite a few people in town who just don't know how to read.

"'Who controls the past,' ran the Party slogan, 'controls the future who controls the present controls the past.' . . . It was quite simple. All that was needed was an unending series of victories over your own memory. 'Reality control, they called it; in Newspeak, 'double think.'" Orwell, 1984.

[From the Washington Post, Jan. 16, 1982]

MEESE INVOLVED IN TAX-EXEMPTIONS SHIFT

(By Martin Schram)

White House counselor Edwin Meese III had been involved since mid-December in the controversial administration policy reversal giving tax exemptions to segregated private schools, but he never informed his two colleagues in the ruling White House triumvirate of the plan, according to White House sources.

Chief of staff James A. Baker III and deputy chief of staff Michael K. Deaver were said to have been furious when they learned of the decision about two days before it was announced Jan. 8, the sources said. But they were not so furious as to demand that the decision be changed or reconsidered, the sources added.

Meese said in an interview that while he approved of the decision he never gave his formal approval, nor was he asked to. "I was not involved in it at all," he said. He conceded that he did have a role, but insisted it was a minimal one.

"I had some knowledge of what was going on, but I don't have anything major to do with it at all," he said, "I got some information on it . . . but it was a departmental thing . . . involving Treasury and Justice." The matter was coordinated by White House counsel Fred Fielding, and Meese said he was kept apprised of the deliberations.

He added that he approved of what was being done. Sources said they believed Meese had privately briefed the president on the matter and had won his backing. But Meese said, "I do not remember talking with the president about it."

Word came first to Baker in a Jan. 6 call from Attorney General William French Smith, who told Baker that the decision had been made and was to be announced on Jan. 8, sources said. Baker was said to have gone to Meese then and asked what was going on. After being told, Baker said he wanted the matter raised at a senior staff meeting.

The next morning, Fielding briefed the staff. "Everyone acknowledged that there was a political downside," said one official who was present. But no one dissented strongly enough to stop the announcement, sources said.

On Jan. 8, Treasury and Justice officials announced that the administration would no longer deny tax exemptions to schools that practice racial discrimination, reversing a 12-year-old policy.

Baker declined to comment, and Deaver could not be reached for comment.

[From the Washington Post, Jan. 29, 1982]

THE NEEDY

(By Judy Mann)

You can tell from what is coming out of the White House now that the party line for the New Federalism is that the states have changed, that they are much more socially responsible than they were before the Great Society. "We have a different society than we had 20 or 25 years ago when the federal government felt it incumbent upon it to develop national standards," was the way presidential counselor Edwin Meese put it.

In the spirit of the New Federalism, the Reagan administration is proposing to turn over to the states child-welfare and adoption-assistance programs. The administration is also proposing to turn over a number of other programs, that do things like feed and shelter and provide medical care for children, but let us look for a moment at what is happening with child welfare and adoption assistance. It illustrates as neatly as anything else the human cost of the New Federalism and the extraordinary disruption in social services to the truly needy that the Reagan administration is creating.

Mr. Meese's social changes did not extend to states' foster-care systems, and in June 1980, Congress voted to provide federal remedies for what had become a national scandal. This was done by nearly unanimous, bipartisan passage of the Adoption Assistance and Child Welfare Act.

This highly technical piece of legislation, which was five years in the making, was designed to give financial incentives to the states to better manage their foster-care programs, to get children out of foster-care homes and back into their own families when that was possible, or into adoptive homes when their families were no longer viable.

The act was an effort to put a stop to situations in which children were taken out of their homes because of abuse or other family problems and then placed in foster care, shuttled from home to home, lost in the system, never getting back to their own families or some kind of permanent home. The act provided money for services to help repair the original family and, when that was deemed unfeasible, it provided money to place foster children in adoptive homes and provided subsidies to families adopting welfare children with special needs or handicaps.

The best estimates available are that there are a half-million children in the foster-care system now, says Brenda Russell, legislative analyst of the Child Welfare League. "This legislation mandated a lot of protections for children so they would not get lost in a foster-care system and it mandated a lot of work with the families."

Up until 1979, the foster-care system was run and financed primarily by the states at a cost of $800 million a year with the federal government providing only $56.5 million, or 7 percent of the child welfare services budget. But the states, while providing 93 percent of the budget, were unable to accomplish needed reforms. The states' collective failure in this area was of such magnitude and so scandalously documented in congressional hearings that the child welfare act, which tied reforms to federal financial incentives passed 401 to 2 in the House.

In his State of the Union address, President Reagan assured the nation that "child welfare programs will not be cut from the levels we proposed last year." These soothing words leave the impression that the program is functioning the way Congress intended. It is not. Russell says that the Carter administration published federal regulations for the program on Dec. 31, 1980, but that they were held up in the midst of the Reagan regulatory reform. It was further jeopardized when the Reagan administration proposed turning it over to the states as part of its block grants proposal last year. Congress beat back that effort as well as a major cut in the program's funds, but the states were in limbo, waiting to see what would happen, and now the administration is renewing its efforts to turn this over to the states. "We still don't have regulations for this law," said Russell.

Further, she said, an advance copy of the child welfare block grant proposal shows that the Reagan administration wants a 46 percent reduction for child welfare programs in 1983, over what is currently authorized for that year. This is slightly more than it requested be cut in 1982, and, she said, it would reduce funds to the point that they would be used up financing foster placement, and such services as adoption or family reunification would become luxuries.

For a half-million youngsters, the New Federalism will provide the same shot at life they've been getting under the old state foster-care system, and maybe not even that.

[From the Washington Post, May 8, 1982]

PROGRESSIVE INCOME TAX IS "IMMORAL," MEESE SAYS

(By Herbert H. Denton)

White House counselor Edwin Meese III said yesterday that he believes "the progressive income tax is immoral" and that the Reagan administration will resist efforts to cap next year's tax cut for people in the upper income brackets.

"I don't think we should penalize someone because he's successful," Meese said.

In a breakfast meeting with reporters, Meese said that he personally favors a single flat tax rate for all individuals, as opposed to a progressive tax in which rates rise with income. He also said the administration has no plans to overhaul the existing graduated income tax structure, but added, "We're not going to make it more progressive."

The issue was raised in the abortive efforts last month of the White House and House Democratic leaders to reach a bipartisan compromise on reduction of next year's likely federal budget deficit.

House Majority Leader James C. Wright Jr. (D-Tex.) said he had suggested to President Reagan that one way of doing this might be to cap next year's scheduled tax cut at $700, which means curtailed tax cuts for individuals with incomes over $45,000.

Wright said Reagan told him: "Jim, that simply compounds the progressivity of our income tax and that's what's got us into all the trouble."

At the breakfast meeting yesterday, Meese continued the vigorous White House campaign of denying that the administration has plans to curb the growth in basic

Social Security benefits and attempted to tag Democratic leaders as the ones first proposing such cuts in the negotiations that collapsed last month.

Asked to explain how the White House would achieve the $40 billion in Social Security retrenchment called for over the next three years in the new budget compromise between the administration and Senate Republican leaders, Meese said those decisions would be deferred until the White House receives recommendations of a bipartisan presidential commission on Social Security, which is to issue its report after the November elections.

Meese indicated that he believed the budget log jam on Capitol Hill had been broken by the deal struck with the Senate Republicans. The agreement will provide a "good framework" for negotiations in the House, although Meese said he believed it was "entirely possible" that there may have to be some further changes to get a budget through.

"What we put together with the Senate is pretty close to a final figure of what you're going to get in the Congress," he said.

Meese said Reagan has already talked to a few Democrats "in a sporadic way" in an effort to build a majority coalition in the House similar to the alliance of Republicans and conservative Democrats that supported the president on the budget and tax cut last year.

"You may lose a few Republicans and get a few Democrats," he said. He declined to say where he though the new Democratic support would come from.

Once a budget is enacted, Meese said, that would serve as a signal to financial markets and catalyst for economic recovery that would lead to lower interest rates by July and continue to drive the inflation rate downward, although he declined to predict by how much he expected them to drop.

High rates of unemployment, which rose to 9.4 percent nationally last month, their highest levels since the Great Depression, would probably hurt Republicans running for reelection, Meese acknowledged, but he said he believed veteran Democrats would suffer too as voters blame economic problems on all incumbents.

[From the Washington Post, June 24, 1982]

RECORDING BY REAGAN BENEFITS FOUNDATION

(By Howie Kurtz)

The Heritage Foundation has been using a taped endorsement from President Reagan, apparently without his knowledge, to raise money.

The conservative research organization, which earlier this year solicited contributions with the help of a letter from White House counselor Edwin Meese III, recently sent letters inviting 35,000 former donors to dial a toll-free number and hear a taped message in which Reagan praised the foundation's work. This was followed by an appeal for contributions by Edwin J. Feulner Jr., who heads the tax-exempt group.

Reagan said on the tape that, after he was elected, "There was one group that gave us special, substantive help we'll never forget. I'm talking, of course, about that feisty new kid on the conservative block, the Heritage Foundation."

Reagan said the foundation's 1,093-page transition report "combined mastery of the federal bureaucracy with a no-nonsense plan to cut it down to size. We've been using it to our and the country's advantage ever since. . . . As a matter of fact one of the people it's been most useful to, and used by, is me."

The next voice on the tape is Feulner's. "I'm pleased that President Reagan thinks so highly of our organization. I hope you will renew your financial support today. We urgently need your help if we're going to continue to provide the Reagan administration with the kind of hard-hitting research President Reagan described in his message."

White House spokesman Anson Franklin said this week that Reagan taped the message "out of gratitude" for the foundation's help, but that "it was not prepared for fund-raising purposes. The president did not know it would be used in connection with a fund-raising letter."

Anson said the White House did not plan to object to the practice, "We do not have a reaction one way or another," he said.

Herb Berkowitz, a spokesman for the Heritage Foundation, said he believed the White House knew that Reagan's message would be used in part to raise money. He said the president originally made the comments last summer for a 14-minute promotional film on the foundation's work. The film also included comments from Meese, budget director David A. Stockman and other administration officials.

"There was no question the film would be used for our own internal fund-raising," Berkowitz said. "It was understood. Neither the president nor any other public officials who appear in the film call on any person to support the Heritage Foundation. They just say what they think of Heritage Foundation."

Berkowitz said about 1,000 people responded to the mailing, but could not estimate how much money was raised.

Last January, the foundation told 5,000 potential donors that they could meet with top White House officials by contributing at least $1,000 to join the "President's club" at the foundation. Enclosing an endorsement from Meese, Feulner wrote that "you will be provided with an access to Washington policy makers which cannot be had at any price."

Meese has addressed two Heritage gatherings, and Berkowitz said the president plans to speak to a conference being sponsored by the foundation this fall. The foundation which is spending $7.2 million this year on studies and publications raises nearly half its income through direct-mail appeals and has 140,000 active contributors.

[From the Washington Post, July 30, 1983]

GAO Probe Requested On Meese Deaver Loans

(By Charles R. Babcock)

Three Democrats on the House Post Office and Civil Service Committee have asked the General Accounting office to conduct an "independent review" of $118,000 in loans to senior White House aides Edwin Meese III and Michael K. Deaver in 1981, when they were getting the California accountant who arranged the loan's seat on the U.S. Postal Service's Board of Governors.

Rep. William E. Ford (D-Mich.), chairman of the committee, and two subcommittee chairmen, Reps. Robert Garcia (D-N.Y.) and Mickey Leland (D-Tex.), requested the GAO review in a letter Tuesday to Comptroller General Charles A. Bowsher, according to a Ford aide. They sent a similar letter to White House counsel Fred F. Fielding, asking for results of a review he has begun.

The congressmen told Fielding that they had to be concerned about any allegation that suggests "even the appearance of impropriety with regard to a governor's nomination" because the Postal Service governors have "virtually total policy-making control over this enormous public enterprise."

The Washington Post reported last week that San Francisco accountant John R. McKean, arranged loans, which totaled $60,000 for presidential counselor Meese, and another, for $58,000 for Deaver, deputy chief of staff, to buy a truck, in 1981 when they were reecommending him for the $10,000-a-year job.

McKean and a Meese aide said there was no connection between the loans and the presidential appointment.

The GAO is being asked to review the transactions, "their timing in relation to Mr. McKean's nomination and the comprehensiveness and timeliness of their reporting," the Ford aide said.

McKean told the Post that he merely acted as a trustee for the Meese loans, although he is listed on Meese's financial disclosure form as the creditor.

[From the Washington Post, July 26, 1983]

Fielding To Review Loans to Meese, Deaver, From Postal Nominee

(By Charles R. Babcock)

White House counsel Fred F. Fielding said yesterday that he will review transactions in which two of President Reagan's top aides, Edwin Meese III and Michael K. Deaver, got $118,000 in loans in 1981, when they were getting a presidential appointment for the California tax accountant who arranged the loans.

Fielding said his staff checked the arrangement last year and found nothing wrong.

"I want to go back and make sure my staff review was complete and accurate," he said. "At this point I don't have any reason to believe it would be any different than it was earlier."

Another White House official said Fielding often personally reviews available documentation when a question of propriety is raised.

The Washington Post reported Saturday that Meese's financial disclosure form shows two personal loans, totaling $60,000, from John R. McKean, a San Francisco accountant who was nominated for a $10,000-a-year job on the U.S. Postal Service board of governors in November, 1981.

The first loan to Meese, for $40,000, came in July, 1981, when, according to McKean, Deaver asked if he was interested in the Postal Service job. The second loan to Meese, for $20,000, was in December, 1981.

McKean also arranged a $58,000 loan from a business partner to Deaver in October, 1981, so Deaver could buy a tractor-trailer and lease it out to defer some tax payments.

Deaver has been traveling in Asia. Last night, White House spokesman Larry Speakes said he had spoken with Deaver, who he said told him: "The name of McKean was submitted routinely by me, as I have done hundreds of others in the last 2½ years. The submission of the name had nothing to do with the loan transaction."

McKean told the Senate Governmental Affairs Committee in November, 1981, that Meese and Deaver had submitted his name to the president for the Postal Service board post. He said he does tax work for both men.

Meese continued yesterday to decline to comment on the loans he received. A Meese aide said last week that the money was used for living expenses and school tuition for Meese's children and was not connected to McKean's appointment.

McKean said the loan money didn't come from him, but from clients who didn't know the funds were going to Meese. Speakes said Meese told him the loans were at "pretty stiff interest rates," 21 percent the first year and 18 percent since.

No collateral was required for the loans. They are not due until McKean demands the money. While the interest is to be paid annually, none of the principal has been paid. Fielding said it is his understanding that the interest payments "have been made in timely fashion."

McKean said the loans to Meese were intended to be short-term until he could sell his house in California. Meese sold the house in La Mesa, Calif., in September, 1982, for more than $250,000, according to his disclosure statement. McKean said it is likely that the two loans now will be consolidated and collateralized by Meese's home in McLean.

McKean said he told Meese last year that he should be listed as "trustee" for the loans and did not know why that was not done. Fielding said yesterday that he would check this with Meese.

"If that's the way it should have been, I'm sure he [Meese] will want to file an amendment" to the disclosure form, Fielding said.

McKean said he has arranged similar loans for other clients on a few occasions.

Robert L. Hardesty, chairman of the Postal Service's board of governors, said yesterday that McKean has been an outstanding member.

Hardesty said he had told White House personnel director E. Pendleton James that the board of the $25 billion-a-year postal service needed "first-class appointees," and that he considered McKean "precisely the kind of person I was talking about."

McKean has been nominated to a full nine-year term on the board.

McKean's relationship with the two White House aides and his appointment to the Postal Service board were discovered during a routine check on the people who had lent money to high-ranking administration officials.

Meese and Deaver, who are not wealthy, have indicated that their White House service has caused them financial hardship. As two of the most senior White House officials, they each make $69,800 a year.

The loan McKean arranged for Meese is the only outstanding financial obligation Meese listed in the financial disclosure form he filed last May 16. The loan McKean arranged for Deaver, which is held by a McKean business partner, Helmut Moss of Boise, Idaho, is one of three debts reported by Deaver. The other two are bank loans of at least $15,000 each.

McKean, 53, is the head of his own accounting firm in San Francisco. He said in telephone interviews this week that he considered the loans he arranged to be of a "purely professional nature" and "a logical extension of a professional service to a client."

He said he met Deaver before President Reagan was elected in 1980 and did some accounting and tax projection work for Deaver. Deaver recommended him to Meese and he now does tax work for both men. He said he does not socialize with either, seeing them only for an occasional lunch.

He said that a review of Meese's finances in 1981 had showed "a negative cash flow, a deficit. There was going to be a necessity for some type of borrowing." He said he didn't know why Meese didn't go to a bank. "He came to me. It was intended to be something that rolled over very, very quickly. We call them swing loans."

The Senate committee did not ask, and McKean did not volunteer, whether he had any financial dealings with Reagan administration officials.

Initially, McKean was appointed to the nine-member board of directors for the $25 billion-a-year Postal Service operation to fill a term that expires in 1986. Earlier this year he was renominated to a full nine-year term that expires in December 1991.

The Postal Service governors are paid the $10,000 a year, plus expenses and an additional $300 for each monthly meeting they attend. Postal Service records show that McKean has been reimbursed for more than $18,000 in expenses since he joined the board in April 1982, most of that for first-class air fare back and forth from San Francisco to meeting sites in Washington and at regional offices.

McKean said they didn't turn out to be short-term loans because Meese had difficulty selling his home in California. During the same period Meese was buying a home in Virginia and had to make tuition payments for two of his children.

Meese sold his home in La Mesa, Calif., in September 1982 for more than $250,000, but has not paid any of the principal on the loans. "With the situation like it is we will likely consolidate the loans and have [them] collateralized against his Virginia home," McKean said.

McKean said he would arrange a similar loan for any client with a "working capital impairment" and had done so for others on a few occasions.

The clients who put up the money for the Meese loan did so because they trusted that McKean would see the money was repaid, he said. He didn't tell those clients that Meese was the recipient "just in case they had some business transactions with the government."

He said he told Meese that others had provided the money for the loans and he McKean, should only have been listed as "trustee" on Meese's disclosure form. Reporting the loans from McKean personally—the way now appear on the disclosure form "might be looked at askance," McKean said. He said he had no idea why the word "trustee" was not added and that, because of the omission, "I was left hanging out there as the lender."

The loan he arranged for Deaver, in the name of Deaver's wife, Carolyn, was simply to deter taxes, because Deaver had launched up motion from a lump sum payment from his public relations firm Deaver and Hamnaford, McKean said. I said the arrangement deterred "a few thousand dollars" in taxes for Deaver most in the first year of the lease.

The note is held personally by his partner, Moss, of Idaho Peterbilt Inc., in Boise, the accountant said. because "I didn't want to participate in anything with Mr. Deaver directly." He said I didn't want to benefit personally from the arrangement. Moss owns 75 percent of the company, a distributorship for Peterbilt trucks. McKean owns the other 25 percent.

Asked why he referred Deaver to his partner, McKean said he had found the tax syndications "are often not what they are presented to be. This is one I had direct knowledge of and could assure that it would turn out as planned."

Moss said in an interview from Boise that he has never met Deaver and was only vaguely familiar with the details "McKean handled all the paperwork at that," he said.

Moss said he didn't know why the Deaver liability was listed with him by the creditor, rather than his company. "There must be a tax break there somehow. I leave that all up to him [McKean]. My end is seeing that the trucks run."

McKean said he did not expect anything in return for his financial assistance to Meese and Deaver. "And if I did wouldn't have been the Postal Services which he described as a "tough job and a lot of work." He also said he didn't think Meese and Deaver were returning a favor by getting him the appointment. "They saw someone performing something in a professional manner and thought I could serve" the government.

McKean, whose financial disclosure form shows his net worth to be $17 million, said that when he first joined the Postal Service board he didn't know much about the huge business but then "I hope I have projected a certain competence in my field. I think I can make a contribution.

[From the Washington Post, Dec. 18, 1983]

WHEN EDWIN MEESE TALKS, MANY HEAR THE PRESIDENT

(By David Hoftman)

He is a mirror of the emotions and convictions of President Reagan. Others have come and gone from the inner circle, but he has talked with Reagan about the issues for so long that when he frames a question, the Reagan answer is not far behind.

Edwin Meese III, the White House counselor and the most durable of a generation of Reagan assistants, has long been recognized as the one adviser who will consistently reflect the instincts of the president. When Meese talks, many hear the voice of Reagan.

But Meese is a puzzle. Three years at the seat of power have left others weary, cynical and discouraged. White House chief of staff James A. Baker III recently considered leaving to become major league baseball commissioner. Two of Baker's top deputies are departing for new jobs.

Not Meese. Those who work with him, and those who know him well, said in a series of interviews that he seem untouched by the crisis of the last three years, little changed from the day he took over the spacious corner office in the White House west wing. It is a quality that many consider Meese's strength and weakness.

He has endured financial hardship, a personal tragedy and White House infighting that has seemed to pain his sense of decorum and has challenged his primary as a Reagan adviser. He has been greeted as "deputy president" and ridiculed as Reagan's Scrooge because of his comments about hunger.

The personal tragedy was the death of his son Scott, 19, in an auto accident here in July 1982. Friends said Meese grieved deeply at the loss, that he seemed reserved and stoic for many months afterward. "He went through a terrible trial, a very difficult period, and he's trying to come out of it," one said.

Outwardly, Meese goes on being Meese, his vision of the Reagan presidency seemingly undimmed by the events that have exhausted his rivals, his outlook unfettered by the political turbulence that makes up life at the White House.

After three years, Meese still says he believes that news "leaks" are wrong and can be stopped. He still says he believes that power should flow the way it does on the organization chart. He insists that he won't respond in kind to staff infighting.

He said he assumes, as he did when talking to news service reporters about hunger, that "as long as they print the whole statement and don't take it out of context, there won't be any problem."

In the Reagan White House, some colleagues consider Meese a bit naive.

"He has made up a lot of rules and continues to play by them even when nobody else does," a White House official said. "I like his rule book; it's a lot more decent way to play. But they were Sacramento rules. Here they are confronted by the Washington rule book."

Added a Meese intimate: "To survive in this town, you need a certain hardness and cynicism, and I don't think Ed will ever develop it. His life here has been made a lot more difficult because he just doesn't have that cynicism."

Meese, 52, often recalls the halcyon days of Sacramento, where, as the newly elected governor, Reagan summoned him in 1966. Meese, then a deputy Oakland district attorney, served as legal affairs secretary before becoming chief of staff in Reagan's two terms as California governor.

In the Reagan presidency, the cherubic, ruddy-faced Meese has been a far more complex player than is commonly understood outside the White House, according to interviews with a score of presidential assistants and Reagan political associates. Many of them, who agreed to comment on the condition that they not be identified, made these points:

Meese has demonstrated that he can be a powerful influence on Reagan at key points, such as the president's recent decision to sign a dairy bill that other advisers wanted him to veto. But Meese has at other times had little or no impact.

"Meese's strength is as a counselor," one of his White House colleagues said, "but his weakness is that he doesn't recognize that his great strength is as a counselor."

Several officials said they think Meese was miscast at the outset of the administration when he was given supervision over domestic policy-making and the National Security Council, while Baker handled the press, Congress and running the White House. They said Meese would have been at his best devoting his time exclusively to counseling Reagan. However, Meese said he would not "second guess" the arrangement.

In internecine staff conflicts, Meese has often been portrayed as a conservative opposing the "pragmatic" Baker, but those labels don't always fit reality. On some issues, such as law and order Meese is an unyielding conservative; he has pushed hard for Reagan's anti-crime legislation and spends hours reviewing the records of judgeship candidates.

But he is less ideological on other matters. For example, he has been at odds with administration tree-market conservatives who wanted to end subsidies for synthetic-fuel plants.

In the fight oer the U.S. Commission on Civil Rights, Meese urged Reagan to try to put his philosophical stamp on the panel even though others thought that would be politically explosive. "He's willing to have the administration take the heat for principle," said one official.

Meese has long had a reputation, first earned in Sacramento, as the one who summarizes a problem for Reagan, presenting all sides fairly. Officials say that Meese retains this role, but more recently, as other conservatives—including national security adviser William P. Clark—have left the White House, he has also become a channel for conservatives to reach Reagan.

Meese is secure in his position at Reagan's side. "I know one thing for certain," said someone who has been a close associate of Meese and Reagan for more than a decade. "Reagan wants him there as long as he is president."

Craig Fuller, assistant to the president for cabinet affairs, said, "There is not an issue that comes to the president that Ed Meese does not have an opportunity to influence the president's thinking on, if he chooses to do so."

That qualification can be crucial. On many issues, Meese has not been a factor because he has chosen not to be. But he recently demonstrated that he can exercise his own power.

Most of Reagan's advisers had urged him to veto a dairy bill that would pay farmers not to produce milk. Led by Office of Management and Budget Director David A. Stockman, these advisers argued it was budget-busting, special interest legislation that would set a bad precedent for the election year. Stockman went so far as warning members of Congress that Reagan would veto the legislation.

But the bill also included drought relief for Texas and a tobacco provision favored by Sen. Jesse Helms (R-N.C.) and other tobacco-state lawmakers.

According to two well-informed White House officials, conservative backers of Helms urged Meese to try to avert a veto. They reportedly said that a veto would undermine Helms' standing in North Carolina and, if he is defeated next year, would weaken the conservative cause and GOP control of the Senate.

Although Meese was, by most accounts, in favor of a veto early on, he played a key role in Reagan's decision to sign the legislation over the objections of other assistants.

"If Meese had really pushed for a veto, it would have been vetoed," said one of the officials. "But the conservatives and the tobacco people had an impact on him."

Inside the White House and beyond it, conservatives who don't trust Baker have increasingly sought Meese.

"An awful lot of conservatives around the country look on him as a place to bring their complaints," said former representative John Rousellot (R-Calif.), a regional coordinator for the Reagan reelection campaign. "He's a sounding board."

In an interview last week, Meese said conservatives come to him "naturally."

"The fact that they view me as their most available link to the president I don't think is unusual, in view of the number of years that I've worked with him."

But Meese does not fit the caricature of a doctrinaire conservative, others say. Presidential assistant Richard G. Darman, a key Baker associate, said that while Meese is "clearly conservative," his operating style "is moderate, balanced and fair."

Meese was instrumental in a recent Reagan decision to continue a federal policy that allows farmers, including powerful California citrus growers, to control the volume and price of crops. Many free-market advocates including Stockman, had tried to abolish or restrict these agricultural "marketing orders." They saw the issue as a test of ideology versus practical politics, but Meese was not on their side.

Meese said that, even though he doesn't think the marketing orders are a good idea, they are in place and, thus, should not be abolished.

Meese is not known for making impolite comments in public, although there have been private outbursts of frustration. Recently, for example, he is said by two officials to have called Senate Republicans "wimps" in exasperation at their inaction on tuition tax credit legislation. Meese said the alleged incident "never happened."

Meese is often meticulously careful about his statements to reporters. But he seemed to stray in the Dec. 9 interview in which he said he has never seen "any authoritative figures that there are hungry children" in America and that some people go to soup kitchens "because the food is free and . . . that's easier than paying for it."

This stirred cries of insensitivity from Democrats, but associates of Meese said they think his comments had more complex origins.

Three officials who have worked closely with Meese over the years said one reason for his remarks was that, like Reagan, he has long felt that government food programs are ridden waste and fraud.

"He sees billions and billions going to waste to people who don't need it," said one official, who noted that this is why Meese had pushed to establish the food task force.

Another reason offered by these officials is that Reagan and Meese have often privately exchanged anecdotes about government waste, such as Reagan's example of the food stamp recipient who bought an orange and a bottle of vodka with his benefits.

"It's not that they are heartless," said this official, "but they have come to believe certain facts are true. As they articulate them, they do it without sensitivity. They do believe there are cheaters. They have been together a long time, and they have read the same papers, the same facts, the same stories."

Another explanation is that Meese inadvertently abbreviated his comments. Meese, who claims his remarks were taken out of context, acknowledged in the interview that he had shortened his usual response to questions about hunger.

"I was shorthanding because the question was not really directed at hunger. It was directed at budget cuts and deficits," he said. "It was kind of a tangential issue rather than a major issue. If people had concentrated on the whole statement, nobody could quarrel with it. But they took something out of the beginning and something out of the end and they made it sound like my whole statement."

Meese didn't duck the controversy: The day after the story broke he went on live broadcast of NBC's "Today" show twice before 9 a.m.

A White House official said Reagan immediately wanted to defend Meese. "He was rarin' to go," but didn't get the chance until last week.

Meese is a self-declared pacifist in the long-running White House staff battles. Some see this as "laudable," as one official put it, but others say it leaves Meese at a disadvantage.

"You have to understand that Meese and the others hark back to Sacramento. It was their formative experience. They didn't have a lot of backbiting. The staff was like a family," said one official. "You can imagine after going through that how they felt when they came here. Meese likes a lot of camraderie. There isn't as much in this building as he would like."

Meese is irked that staff friction leads to leaks and has urged Reagan to try to control leaks.

"He doesn't understand why you will pick up The New York Times and see that a high White House official said today we're in deep trouble on the gender gap because of some study that was made," said James E. Jenkins, a Meese assistant. "Whether or not it is true, why does a high White House official say things like that?" Jenkins said Meese has often asked. "He doesn't know why, and I don't either."

Meese said, "I'm not going to do something by leaking or dealing in a cowardly and anonymous statement to a reporter because not only are they wrong, but they are hurtful to the president."

Others in the White House say that while Meese tries to remain above the fray, he has occasionally fought back. They note that Meese was not questioned in the recent Justice Department investigation of leaks and that most of Baker's assistants were. Then, as Reagan flew to Santa Barbara over Thanksgiving, when the Baker staff was trying to keep the lid on the story of the investigation, Meese seemed to relish going out of his way to tell reporters about it, a move the Baker assistants saw as directed at them.

Meese's loyalty lies with Reagan. "The one thing I would most like to accomnplish," he said last week "is to share in making sure the president's objectives are fulfilled."

[From the Washington Post, Jan. 24, 1984]

BACK IN LAW ENFORCEMENT

(By Michael Barone)

For nearly a dozen years, Edwin Meese has been a high-level appointee serving under a politician determined to shrink the size of government, but he comes from a family that has been in government for generations. His grandfather was a city councilman and city treasurer in Oakland, Calif., and his father was Oakland's city treasurer and tax collector. The third Edwin Meese grew up in the middle-class Glenview and Park Boulevard area, near Oakland High School, and only a mile across Lake Merritt from the Alameda County courthouse.

The politics of Oakland today are liberal, even radical, and Democratic, but when Edwin Meese was growing up they were progressive and mostly nonpartisan. Nearly every elected official was a Republican, but most important local offices were nonpartisan. Meese says he remembers during the 1938 campaign, when he was 7, putting a bumper sticker on the car for Earl Warren, running for reelection as Alameda County district attorney. "He was a very tough DA," he says, echoing the general verdict but with an approving emphasis, and adds that his father knew him. As a kid, Meese says, he had no sense of what he wanted to do, but he was interested in public administration—not politics, not the private sector—"to some extent."

And it was to public administration that he went after finishing school and the service. He signed up in ROTC at Yale even before the Korean War started and was commissioned in field artillery in 1953, "by the luck of the draw" he did not go on active duty until June 1954, after he had finished his first year of law school at Berkeley. He considered a military career, and spent nearly 20 years in the Army Reserve, but he went back and finished his law degree and, in 1958, he applied for a job in the office of the Alameda County district attorney, J. Frank Coakley. Deputies, as they were called, were chosen there "just like at any law firm," he says; obviously it didn't hurt to bear a name well known for years at the courthouse.

But as a young prosecutor, Meese was anything but a hack. He showed a flair and initiative that helped bring him, eventually, to the notice of the one partisan official he's ever worked for, Ronald Reagan. He tried lots of cases, and is particularly proud of a murder conviction he got against a man represented by Melvin Belli. He had serious responsibilities: California had the death penalty, and normally the recommendation of the deputy DA determined whether it was applied.

When the Berkeley campus erupted in rioting in 1964 and 1965, the Alameda County DA's office was prepared. Meese observed how police in Chicago and San Francisco handled mass arrests and how they prosecuted them afterward. He trained local police to make arrests peacefully and then to take Polaroid pictures of those arrested. At trial these pictures buttressed the officers' identifications; once he won the first test cases, almost all of the 773 arrested were convicted or pleaded guilty.

Many of these students were less than a decade in age from the young man who planned their arrests and masterminded their prosecutions, but the Edwin Meese who recalls them seems not to have identified with them at all. He was a young family man, living in upper-middle-income neighborhoods in the Oakland Hills just a mile or two out from the neighborhood where he had grown up, working in the same downtown Oakland his father and grandfather had.

He was part of a government with limited functions—collecting taxes, enforcing the law—a government that performed those functions efficiently, with the most modern and innovative of methods, and without a hint of corruption. Even as late as the Berkeley riots, government did not mean antipoverty programs, affirmative action or legal services programs for the poor. To the cheeful, hard-working, religious men such as Edwin Meese, these new types of government must have seemed strange and unnecessary. Weren't they already keeping the peace, treating people fairly and doing things in the most modern ways?

Edwin Meese's first taste of partisan politics came in 1961 and 1962, when he represented the District Attorneys' and Peace Officers' Association before the California legislature. This was a Sacramento of fabled lobbyists, of hard-drinking legislators with no staffs, of Speaker Jess (Big Daddy) Unruh. After he came to Washington Meese sparked a controversy by calling the ACLU a "criminal's lobby"—perhaps a natural reaction for a prosecutors' and policemen's lobbyist used to a more sympathetic legislature and less opposition than he gets today.

Meese found out later that it was his work in Sacramento that brought him to the attention of the Reagan gubernatorial transition team in 1966. He became Gov. Reagan's extradition and clemency secretary—a title later changed to legal affairs—

and, in 1970, Reagan's chief of staff. At 35, he was one of the oldest of the early Reagan appointees, and now he is one of the few with a top appointment in his national administration.

After Reagan's governorship—when it was by no means certain that Reagan would ever be president—Meese was an executive with the Rohr Corp. in San Diego. But he left to become director of the Center of Criminal Justice Policy and Management at the University of California San Diego Law School. He has worked three years in the Reagan White House and has been involved in many controversies. He has had his successes, but he doesn't sit in the corner chief of staff's office. Now he has been nominated to be attorney general. So, as he has done again and again through a varied public career, he returns to the kind of public administration that interests him most—law enforcement.

[From the Washington Post, Feb. 20, 1984]

MEESE TO QUIT ARMY RESERVE, ADMINISTRATION SOURCES SAY

Attorney General-designate Edwin Meese III has decided to give up his disputed status as a colonel in the Army Ready Reserve to remove an element of controversy before his Senate confirmation hearings begin March 1, administration sources said yesterday.

Meese's 1981 promotion from lieutenant colonel to colonel and his transfer from the inactive reserve six days before mandatory retirement had drawn charges that "undue influence" had been brought to bear.

A seven-month Army investigation recommended last September against revoking the promotion of Meese, who is counselor to President Reagan, but found unintentional irregularities in the process.

Senate investigators listed Meese's promotion and transfer among areas they would probe in the Judiciary Committee's confirmation hearing.

Administration sources, when asked that they not be identified said yesterday that White House counsel Fred F. Fielding had urged that Meese at least transfer back to the Retired Reserve, a move that would trigger mandatory retirement.

One source said that Fielding wanted Meese to leave the reserve to "remove the controversy."

"It was a very hard decision for him because he really likes that military involvement, and I think he had visions of ultimately becoming general," an associate of Meese said yesterday. "But he was finally persuaded that resigning would defuse or at least diminish, it [the promotion] as an issue."

Efforts to reach Meese for comment yesterday were unsuccessful.

[From the Washington Post, Mar. 2, 1982]

REAGAN AIDE OFFERS LAID-BACK DESCRIPTION OF NUCLEAR WAR

(By Mary McGrory)

Ronald Reagan's counselor, Edwin Meese III, yesterday gave what may be the ultimate in laid-back description of nuclear war. He called it "something that may not be desirable."

Meese was addressing the Civil Defense Association at the Shorehan Americana Hotel, bearing the president's warm good wishes and the happy news that Reagan intends to double its budget as part of his strategic planning.

Meese conceded that it is "not an easy task to defend and justify civil defense" because "it is the kind of thing people have a psychological aversion to."

Reagan's plans to add 17,000 nuclear warheads to an arsenal fo 25,000 has run into considerable flak. Aroused physicians and scientists are raising the alarm about unspeakable death and destruction. The American Medical Association has formally declared that "no medical response" is possible in the event of nuclear attack. And Jonathan Schell's New Yorker series about the end of the planet is working its way into the national psyche.

But Meese said that that civil defense "is a deterrent for a possible attack on this nation" and the Civil Defense Association workers applauded vigorously.

"Preparedness," he declared, "is the best way to avoid the consequences of something that may not be desirable."

The "deterrent," as presently constituted, seems unlikely to give the Soviets pause. At its heart is the crisis relocation plan, an intricate, upbeat scheme that envisions orderly removal of citizens from "target areas" to "host areas" and their return, within a relatively short period of the bomb burst—a return to "a home area" that sounds a step away from normalcy.

A few lines form the literature put out by the Federal Emergency Management Agency, which is in charge of civil defense, from a section called "What Home May Be Like" give the flavor of this exceptionally sunny scenario:

"Fuel and food supplies will be rerouted to your home area; however, this may take a day or two. . . . It may be necessary to take extra precautions with waste. Some food stocks will probably have to be carried back in your car. Be sure it is fresh, particularly raw meat."

The whole thing conjures up a picture of an area that has somehow escaped flattened buildings, heaped corpses and the radiated, blinded, or burned inhabitants generally associated with nuclear assault.

The real defect in the plan is that it relies on an eight-day warning which, according to William Murray, public affairs director of the Civil Defense Association, "we will not receive."

But Meese ways that "reinvigoration" of civil defense will "give people the confidence that their lives can be protected."

The Civil Defense workers might have benefited more from listening to one of their number who was not at yesterday's meeting. Perhaps the speech given to the Greensboro, N.C., City Council by Marilyn Braun, 37, coordinator of the Greensboro-Guilford Emergency Management Assistance Agency, would have been more to the point.

Braun, charged by her superiors with making a two-year update of war plans, sent instead a letter of protest which, she was told, would "never get to the federal level." But to avoid a fuss, these superiors accepted her protest as an update and confined themselves to complaining to reporters that she is "uncooperative." Upon presenting the findings of a committee of experts and concerned citizens who studied all aspects of the problem, she told the Greensboro City Council on Feb. 11:

"We have no protection today in Greensboro or Guilford County for this threat . . . the documents and civil defense publications that we have on record fail to address minimal human needs in protecting people from 'blast' and 'fallout'. . . . Given these circumstances, we are presently unable to design an emergency plan to offer protection from nuclear detonations.

[From the New York Times]

MEESE SAID TO BE ALTERING REPORT ON FINANCES FOR THE SENATE PANEL

(This article was reported by Jeff Gerth and Leslie Maitland Werner, and was written by Mrs. Werner.)

WASHINGTON, March 15.—A White House official said today that Edwin Meese 3d, counselor to President Reagan, would revise his financial disclosure statement to include a stock sale he had previously failed to report.

In addition, Mr. Meese is revising the statement to include another matter, an unreported interest-free loan of $15,000 his wife received in 1981.

The Senate Judiciary Committee decided to reopen hearings on his nomination to the post of Attorney General after Mr. Meese wrote a letter Tuesday acknowledging he had failed to disclose the loan, as required by law. His letter made no mention of the omitted stock sale.

Mr. Meese informed the committee about the loan after his office received questions about it from a reporter. Today, when a reporter inquired about the stock sale's not being mentioned on the report, the White House said Mr. Meese would revise his financial disclosure form to include that, too.

In his testimony before the committee, Mr. Meese said he had bought and sold two stocks while in the White House. He said one transaction involved about $15,000 worth of Biotech stock and that other, which he did not name, involved "something less than that." The financial disclosure form he had given the committee listed the Biotech stock sale, but not the other transaction.

LETTER ON WIFE'S LOAN

Mr. Meese's letter said that his wife, Ursula, had obtained the loan in order to buy stock in a company called Biotech, whose full name is the Biotech Capital Corporation. He said she had obtained the loan from Edwin W. Thomas, who worked with Mr. Meese in the California office of then Governor Reagan and later as Mr. Meese's assistant in the Reagan White House.

In 1982 Mr. Thomas, who also reported buying and selling $50,000 to $100,000 worth of stock in Biotech, was appointed by President Reagan to serve as regional administrator for the General Services Administration in San Francisco.

Biotech is a venture capital company that invests in high technology concerns, mostly in the medical and health areas. Its chairman and president is Earl W. Brian, who served as the Secretary of Health and Welfare in California under Gov. Ronald Reagan.

According to the White House, Mrs. Meese bought stock in Biotech on the day that it went public, Jan. 23, 1981. James E. Jenkins, Mr. Meese's deputy as Presidential counselor, said that the reason was that she had heard months before Mr. Thomas that its stock was going to be issued. Mr. Jenkins said Mr. Thomas had told Mrs. Meese about it the previous September.

Mr. Jenkins said Mrs. Meese had purchased 2,000 shares of Biotech stock at $7.50 a share. Mr. Jenkins said that she sold it on May 6, 1983 at $6 a share, taking a loss of about $3,000.

Mr. Jenkins said the stock sale that Mr. Meese had not reported on his financial disclosure form pertained to a company called American Cytogenetics Inc. According to documents filed with the Securities and Exchange Commission, a Biotech subsidiary, Questech, purchased a major interest in American Cytogenetics in September 1981.

"On May 22, 1981, Mrs. Meese purchased 200 shares of American Cytogenetics Inc. stock at $2.50 a share, for a total purchase price of $500," Mr. Jenkins said. "This purchase transaction was not required to be reported on Mr. Meese's financial disclosure report for calendar years 1981 and 1982 because the value of the stock did not exceed the reporting threshold of $1,000.

"Mrs. Meese sold the stock on April 29, 1983, at a price of $7.75 per share for a total of $1,550 less a commission of $63.33 for a net price of $1,486.67. Mr. Meese referred to the sale of this stock in his testimony before the Senate Judiciary Committee. The financial disclosure report submitted in conjunction with Mr. Meese's nomination to be Attorney General is being amended to reflect this transaction."

Mr. Jenkins said that because Mr. Meese had not yet compiled his 1983 taxes, he was not fully prepared when he had to fill out a new financial disclosure report in connection with his nomination.

OPERATIONS OF CONCERN

Until 1983, Dr. Brian headed American Cytogenetics, which is in Los Angeles and operates the nation's largest independent clinical laboratory specializing in cancer screening, according to Biotech public filings.

Richard C. Vivian, the vice president, treasurer and secretary of Biotech, said in a telephone interview today that Dr. Brian, Mr. Meese and Mr. Thomas were all in the Reagan cabinet together.

When asked how Mr. Meese happend to buy the stock as soon as it was offered, and why Mr. Thomas would buy so much stock in Biotech, Mr. VIvian said: "They are friendly, and they know what he's doing and they've had confidence in him from their acquaintanceship."

Questch obtained $5 million in Federal Small Business Administration loans in 1982 and 1983. Mr. Vivian said that Dr. Brian had never discussed loans to the company with Mr. Thomas or Mr. Meese. Dr. Brian and Mr. Thomas all declined to comment today.

[From the Washington Post, Aug. 11, 1984]

BRIEFING BOOKS REFERENCE—1980 CAMPAIGN RECORDS OF MEESE ARE REQUESTED

(By Howard Kurtz)

Rep. Donald J. Albosta (D-Mich.) is seeking White House counselor Edwin Meese III's records from the 1980 presidential campaign after learning that an archivist's index of the Meese file contains a reference to "briefing books," according to sources close to the investigation.

Albosta's subcommittee, which is investigating how Ronald Reagan's campaign obtained debate briefing books and other documents from the Carter White House, has completed an initial review of the Reagan campaign files stored at the Hoover Institution at Stanford University. The White House granted Albosta access to much of the archives, but the compromise agreement did not include access to Meese's campaign file.

The Albosta panel has been given an index of all the Hoover materials, however, and sources said a detailed index of Meese's file contains such titles as "briefing books," "hostages," "domestic issues" and "Carter topics".

Administration sources have said that Baker's papers at Hoover contain a file of exotic campaign proposals labeled "Ed Meese." They said the contents include an Oct. 21, 1980, memo to Baker from Reagan campaign volunteer Wayne H. Valis that claimed to report details of a Carter staff meeting "from a source intimately connected to a Carter debate staff member."

Meese, who was Ragan's campaign chief of staff, has told Albosta that he did not know about or participate in "any transactions involving material produced for President Carter."

Albosta said later that his staff is reviewing more than 50 separate documents from Hoover. "I think the material is relevant and most of it is important to our investigation," he said.

Sources said it is unlikely that the panel will obtain the Meese file without further negotiations with White House counsel Fred F. Felding, who helped devise the compromise that allowed the General Accounting Office to identify which Hoover records were relevant to the House probe.

[From the Washington Post, Jan. 25, 1985]

Repayment Questioned for Meese

(By Loretta Tofani)

Independent counsel Jacob A. Stein has told a panel of judges that Attorney General-designate Edwin Meese III might not be entitled to reimbursement of $700,000 in legal fees, Justice Department sources said yesterday.

In a sealed document in the U.S. Court of Appeals here, Stein raised legal and policy issues showing that "it's not a foregone conclusion that Meese gets the money," according to a source familiar with the document. However, Stein suggested grounds on which Meese might be entitled to some repayment.

Stein also wrote that if the Justice Department did not assume its usual role as an advocate protecting the Treasury, the judges should consider hiring another independent counsel or judicial master to recommend whether Meese should be reimbursed and by how much, according to sources.

Justice Department staff attorneys have been in conflict with their superiors about whether the department should challenge Meese's request for $700,000 in fees, according to department sources. Staff attorneys recommended early this month that the department challenge Meese's request, as it would any other request for more than $75 an hour in fees. Meese's attorneys billed him at $250 an hour, according to sources.

But department officials rejected the staff recommendation, sources said. After receiving a copy of Stein's response to Meese's application, department lawyers decided to draft a response that "closely resembles" Stein's.

In his response, Stein refused to judge whether Meese should receive reimbursement. Instead, he pointed to several legal problems that must be addressed before it is decided whether Meese receives the money for his lawyers.

A source close to the investigation said Stein was concerned that the work of future independent counsels would be impaired if the subjects of their investigations and their attorneys knew that those conducting the investigation had to recommend how much they should receive in attorneys fees. "They might try to curry favor," said the source. Stein refused to comment.

Meese has been seeking legal fees under the Ethics in Government Act to reimburse lawyers who advised him during Stein's five-month investigation. Stein found no relationship between Meese's financial ties to individuals and their appointments to federal jobs. He also found no evidence that Meese violated any laws.

In his written response to Meese's fee application, Stein raised questions about whether Meese is entitled to compensation under the Ethics in Government Act. Amendments to the act, Stein pointed out, state that public officials should be reimbursed only if their status as public officials, rather than the offense they allegedly committed, triggers the investigation. "There shouldn't be additional burdens in terms of being a public official," said one source.

In Meese's case, the sources say, the nature of the allegations against Meese would have been serious enough, if true, to warrant prosecution by normal Justice Department standards, so it is doubtful whether Meese is entitled to reimbursement for fees.

Stein's response also questioned whether Meese legally owes his lawyers $700,000 as defined in the amendments to the act. "The statute talks about reimbursement for fees incurred," said a source familiar with the document. "But what does incurred mean?"

Stein's document did not raise at least one issue that Meese could point to in favor of receiving reimbursement for fees, sources said. For example, at least three of the 11 areas that Stein investigated—Meese's decision to keep a gift of gold cufflinks, his alleged involvement in "Debategate" and the relationship between his wife's position at two universities and federal grants to those universities—are not allegations that normally would be investigated or prosecuted by the Justice Department. Nevertheless, they were "thrown in" with the other topics investigated by Stein. As a result, the sources said, Meese could make an argument for reimbursement of legal fees to defend himself against those allegations.

Meanwhile, U.S. Court of Appeals judges here ordered that Meese's application and supporting documents be unsealed today.

[From the Washington Post, Jan. 30, 1985]

MEESE SAYS HE'S MET ETHICAL STANDARDS

NOMINEE TELLS SENATORS HE WOULD SEEK ADVICE FROM FEDERAL LAWYERS ON CONFLICTS

(By Loretta Tofani)

Attorney General-designate Edwin Meese III told the Senate Judiciary Committee yesterday that he did not violate federal ethics standards at any time in his career, including rules that government officials avoid even the appearance of a conflict of interest.

"I honestly believe that to an objective person I did not create such an appearance" of conflict of interest Meese told senators at his confirmation hearings. "But I would try to avoid such circumstances in the future." Later, he added that he now had more experience in Washington and "probably would do things differently."

In an attempt to avoid apparent conflicts in the future. Meese said, he would rely on Justice Department lawyers for advice on ethical matters, including when to recuse or disqualify himself from discussions and discisions in which he might have a conflict of interest.

"I would consult with the office of legal policy in the Department of Justice about financial matters so they would advice me about any potential matters of conflicts of interest," the presidential counselor said. "They would tell me [when] to recuse myself."

Nearly all Republicans on the 17-member Judiciary Committee, led by Chairman Strom Thurmond (S.C.) voiced strong support for Meese in opening statements and throughout their questioning of him yesterday. Democrats voiced concerns about Meese's ethics but in most cases did not say how they will vote on the nomination. The panel is expected to vote later this week.

When Howard M. Metzenbaum (D-Ohio) indicated that he will vote against recommending Senate confirmation of Meese, Thurmond rebuked him, saying he hoped Metzenbaum and other senators would "reserve judgment until after the hearings"—this dispite the fact that Thurmond previously had announced that he will vote for Meese.

Meese, 53, was nominated for the Cabinet post last year, but the nomination ran into trouble over his financial dealings. An independent counsel, Jacob A. Stein, investigated the matter and cleared Meese of violating the law. President Reagan resubmitted Meese's nomination to the new Congress this year.

A recurring issue at yesterday's hearing was a report by staff attorneys for the Office of Government Ethics concluding that Meese "probably" had violated federal ethical standards. Meese denied this.

In the report, a copy of which was released yeasterday, ethics office attorneys F. Gary Davis and Nancy Feathers concluded that Meese probably violated the standards by failing to recuse himself from a meeting were his accountant, John R. McKean, was approved for a seat on the U.S. Postal Board of Governors. McKean previously arranged two loans for Meese totaling $60,000.

The lawyers also concluded that Meese probably violated an ethics rule prohibiting officals from receiving gifts from subordinates because McKean forgave Meese's interest payments on the loans for a time.

Finally, the lawyers said in their report, Meese did not recuse himself from a meeting at which a friend Thomas J. Barrack, Jr., who had helped with the sale of Meese's house in La Mesa, Calif., was approved for a high-level Interior Department job.

As a result, the lawyers said, Meese may have violated a rule prohibiting government employees from engaging in activities that might create the appearance of giving preferrential treatment.

The laywers' 16-page report, which was based on an examination of Stein's findings, was not acted on by their superior, David H. Martin. Instead, Martin wrote the Senate that no ethical violations had occurred.

Martin acted after conferring with White House counsel Fred F. Fielding and Meese's attorney Leonard Garment, who told Martin of a factual error in the Lawyers' report and "presented information that corrected misconstructions that had occurred," Meese said yesterday.

Meese, who said that he asked his attorneys to contact the ethics office after learning of the report from Fielding, said his lawyers "did what was ethical and proper."

In response to other questions, Meese said:

He considers himself liable for legal fees stemming from Stein's investigation. Meese is seeking more than $720,000 from the government to pay the legal fees, but he said yesterday that his attorneys will accept whatever a special court awards them. He also indicated that he would not reimburse them for the difference.

He does not oppose using polygraph examinations to investigate "leaks" by government officials.

As attorney general, one of his priorities would be to protect the "law-abiding from the lawless," with deference to constitutional rights of citizens. He said he also would safeguard individual privacy from "improper governmental intrusion," defend the "civil rights of all Americans" and promote regulations to "expand economic freedom."

He does not see a disparity between his seeking government reimbursement for his attorneys in the Stein investigation at $250 per hour and his support for a proposal to limit lawyers' fees for civil rights cases to $75 per hour, because the administration proposal is not yet law. "If the administration position [on legal fees in civil rights cases] had been in effect at that time [of the Stein probe], I would have felt obliged to be charged $75 per hour," Meese said.

Funding for the Legal Services Corp. should be abolished, and the government instead should provide legal services to the poor through grants to state bar associations.

When Sen. Edward M. Kennedy (D-Mass.), in his opening statement, wondered whether the poor, minorities and the disadvantaged "can look to you as someone who is standing in their corner over the next four years," Thurmond shot back: "The very question the senator raised was raised in the election. I think the people settled that."

Nevertheless, during his own opening statement, Meese pledged that, if confirmed, he will "secure equal protection of the law for all citizens regardless of their race, creed, background or economic circumstance." He also promised to do "everything in my power to uphold the Justice Department's long and distinguished history of dedicated service to the nation" and to bring about "evenhanded justice in the United States."

Meese's critics questioned whether he has the ethical sensitivity necessary for an attorney general, while his supporters said he met—and exceeded—the necessary standards.

"Mr. Meese has not satisfied, in the minds of some, the obligation to avoid even the appearance of misconduct," Sen. Orrin G. Hatch (R-Utah) said. "This accusation has apparently become the last resort for those determined to assassinate a good man's character."

Hatch said the standards of avoiding even appearances of conflicts of interest is an "absurd and grotesque standard" that "few of us in this body could satisfy."

But Metzenbaum had a different view. "The facts lead me inevitably to conclude that Mr. Meese lacks the integrity of character, the evenhandedness of purpose and the sensitivity to ethical values required of the attorney general of the United States," he said.

Throughout the hearing, Meese spoke in a strong, clear voice, smiling frequently and seemingly unperturbed by the attacks on his character. He sat at a desk facing the senators; beside him was Sen. Pete Wilson of California, Meese's home state. Several yards away were Meese's wife, Ursula, daughter Dana, son Michael and daughter-in-law Ramona.

The hearing room was packed with reporters, photographers and others.

In response to Metzenbaum's questions as to why Meese did not rescue himself from the meeting resulting in the appointment of his accountant, McKean, to the postal board of governors, Meese said: "I received nothing of value from Mr. McKean." He added that the loans McKean arranged for him were "an arm's-length transaction."

"Did it cross your mind at the time of that meeting that White House standards of conduct might be applicable?" Metzenbaum asked.

"No, senator," Meese answered. "At the time, it didn't cross my mind."

Sen. Patrick J. Leahy (D-Vt.) said he wanted to ask Meese a question that the senator had been asked by a newspaper in his home state, which he characterized as "probably the most Republican state in the nation."

"Was there anybody," Leahy said, "who had either given loans or financial aid to you or your family who wasn't subsequently given a federal job?"

Meese said at least one person who fit that description was James Schmidt, then senior vice president of Great American First Savings Bank, a bank that gave the Meeses three loans.

The two Office of Government Ethics lawyers who prepared the report saying that Meese probably violated federal ethical regulations are scheduled to be the first witnesses at the hearings today.

[From the Washington Post]

CONCERN MOUNTS ON CONTROLLERS

(By Warren Brown and Carole Shifrin)

The Reagan administration yesterday maintained its hard line against rehiring fired air traffic controllers, despite growing congressional concern that the Federal Aviation Administration's plans to operate the nation's airways without them may fail.

"There's no way . . . and no reason" to rehire the 11,438 controllers who were fired for walking off their jobs Aug. 3, said presidential counselor Edwin Meese III.

Meese's comments came as two House units issued reports that criticized the administration's handling of the strike and called on it to rehire the fired controllers. A House Post Office and Civil Service Committee staff report questioned the FAA's ability to hire and train an adequate number of replacement controllers in a timely manner. "It appears that by the winter of 1983, the system could be in serious trouble," the report said.

A separate report by the Democratic Study Group, a coalition of House liberals and moderates, said continuation of the nine-week-old strike is costing the government and the public billions of dolalrs in tax and business losses.

In comments following a speech to the Aero Club, Meese expressed confidence that the administration would win its legal battle to have the striking Professional Air Traffic Controllers Organization permanently barred from representing federal workers. He said it is unlikely that the Federal Labor Relations Authority, which has jurisdiction over federal labor-management disputes, would order both sides back to the bargaining table.

"I can't imagine that happening," because the PATCO strike "is so clearly a violation" of federal law, Meese said. The FLRA is expected to rule on the PATCO case by the end of the week.

FAA officials acknowledge that the air control system has difficulties stemming from the walkout, particularly flight delays in the Northeast and Midwest, but contend they are working to correct them.

Yesterday, they presented updated plans for returning the system to normal within three years. In a presentation to an annual FAA forecasting and planning conference, Raymond J. Van Vuren, director of the FAA's Air Traffice Service, said reduced levels of commercial and private flights would be maintained for about a year and then be allowed to rise significantly.

Scheduled airlines, now operating at about 82 percent of normal flights, are being notified this week of further cuts they must institute on Dec. 1, reducing overall capacity to about 78 percent. Private and business aircraft using the air traffic control system will operate under tighter rules beginning Oct. 19, when the FAA begins requiring them to seek permission for their flights by filing flight plans up to 16 hours before takeoff.

Van Vuren noted that the new reservation system would give the FAA more control over the private flying sector than it has had since the strike began. Representantives of the scheduled airlines had argued that private aircraft were cluttering the understaffed air control system.

"General aviation should be treated equitably, but not equally," said Dan Henkin, a vice president for the Air Transport Association, the scheduled carriers' trade group.

Van Vuren said the FAA expects to have an adequate number of controllers in airport towers by next September. But he said it would take much longer to bring the en-route flight centers—the control points between airports—to normal staffing levels. As a result, where possible, the FAA is shifting some functions from those centers to airport towers.

Meanwhile, the governments says it is making satisfactory progress in training replacements for dismissed controllers. Mark Weaver, spokesman for the FAA Training Academy in Oklahoma City, said yesterday the school has 920 trainees and would soon have an average daily student enrollment of 1,600 persons. The academy's basic training course runs 17 to 20 weeks. Weaver says that the school will be able to graduate about 5,500 trainees a year.

Van Vuren said the first academy graduates would be arriving at FAA facilities for advanced field training by the end of 1981.

The centers are now staffed by about 9,000 civilian controllers, including supervisors, and 863 military controllers, who will be phased out by Sept. 1982.

[From the Washington Post]

NO MAJOR CHANGES IN CIA MISSION—MEESE SAYS DOMESTIC SPYING CURB WILL REMAIN

(By Lou Cannon)

White House counselor Edwin Meese III said yesterday that the Reagan administration will not permit the Central Intelligence Agency to spy on U.S. citizens here at home.

"The White House is absolutely opposed to the CIA becoming involved in domestic spying," Meese said. "We are not going to put the CIA into domestic espionage or the FBI into foreign intelligence."

Meese said that Reagan soon will issue an executive order meant to improve the CIA's ability to gather information abroad but not affecting that part of a 1978 executive order by former president Carter prohibiting domestic CIA surveillance of American citizens.

It was the first public declaration by a White House official that the administration would not adopt a proposed draft executive order authorizing the CIA to conduct covert operations in this country and spy on Americans.

Last Friday, at a closed session of the Senate Intelligence Committee, CIA Deputy Director Bobby Inman reportedly gave a similar assurance, saying "that the job of the CIA is abroad."

Meese, like Inman, dismissed the importance of the draft order. The White House counselor said it was one of many proposals that had been made for reordering the CIA. He said it probably was "leaked" to the press to prejudice the case against any changes in CIA procedures.

"I don't know of anyone who espoused these changes [allowing domestic spying]," Meese said.

Meanwhile, in testimony before a Senate appropriations subcommittee, Attorney General William French Smith said the new executive order for the CIA is still in a preliminary stage. He said the controversial draft order recommending domestic spying was simply "a preliminary draft of someone's ideas at best."

In a breakfast meeting with reporters, Meese gave these other views:

Reagan continues to oppose a draft to meet military manpower needs. Instead, the administration is examining a number of options to upgrade pay, educational and other fringe benefits and discipline in armed services.

Budget reductions for the arts, humanities and public television were justified, and there is some question whether the federal government should be involved in these activities at all.

Asked to define the "truly needy whom Reagan has said will not be deprived of services under his economic program, Meese responded: "That the needy are those people who through no fault of their own are dependent on government to exist."

[From the Washington Post]

A Talk With Edwin Meese

(By Frank Johnston)

Presidential counselor Edwin Meese III was recently asked by Meg Greenfield, editorial page editor, to elaborate some controversial remarks he had made concerning criminal justice.

Q: Let's start with that ACLU remark—the comment about the ACLU's functioning as a part of a lobby for criminals. Talk about that for a bit and what you meant and whether you got a bum rap on that.

A: Well, first of all, let me say by way of background that probably there is no lawyer in the country who has been more concerned about the Bill of Rights than I have, and in my own career, I've done things like been chairman of committees for bail reform and then chairman of the state bar committee, a subcommittee on defense of indigents. So this is not a question of zealous action against organizations like the ACLU.

Rather, the context was a talk to a law-enforcement group in California, demonstrating some of the problems that law enforcement has, one of which is the opposition to law enforcement legislation by a group of organizations that have systematically opposed any laws designed to curb crime or protect the public. And I characterized this group, which included the ACLU, the Prisoners Union and a number of other organizations that happened to have been mentioned in the footnote in a law review article. In fact, I was describing something that occurred.

The reason I mentioned this particular law review note was the issue the groups were lobbying on had nothing to do with the Bill of Rights. It had to do with how long the sentences should be for felons in California and with the change from an indeterminant sentencing system to determinant sentencing where the judge prescribed how many years a person would be incarcerated for various offenses. In no way would I say that this lobbying shouldn't be done; there's nothing illegal about doing this. But I think it's important the public know that there are forces who have, as one of their activities, an ongoing lobby opposed to law enforcement, and there is really no comparable citizens group that represents the law-abiding citizen, other than the district attorneys association and police officers association.

Q: What should the ACLU do differently? I presume you do think there should be an organization that defends the rights of prisoners and criminal defendants?

A: I have no quarrel with what they do. I have seen times when they had a disproportionate influence, for instance, because of the liberal makeup of some of the legislative committees in California in the past; but I think this has corrected itself to a great extent. What I would like to see is some citizen lobbyists who would be willing to take them on, on the basis of the rights of the law-abiding citizen to be free from criminal activity.

Q: This would be in terms of sentences or jailing or court procedures or what?

A: Various legislative measures come up every year, and I think that the potential victims of crime ought to be represented too.

Q: What are the particular ACLU-type measures you think citizens should be defended against?

A: Well, I think it's the negative actions, and I don't want to single out just the ACLU because there are a number of different organizations, but I think it's the negative impact they often have on legislation that would improve public safety.

Q: What about your own view of civil liberties in relation to criminals or people who have been charged with criminal acts and prisoners?

A: I have a personal philosophy that, first of all, the courtoom should be the place where there is a search for truth, where you have the opportunity to utilize all relevant, valid evidence for determining whether a person did or did not commit a crime, that we should provide a person accused of crime with all the procedural sale guards necessary to make sure that he is defended by an attorney no matter what his economic status might be, that he has competent counsel, that the judge and the jury are fairly weighing the evidence, and that we take every precaution, as our system basically does, to be sure that no innocent person would ever be convicted of crime.

And I think that by and large our system of justice does weigh heavily in that direction.

On the other hand, I don't think we should exclude evidence that is valid simply because there is a claim after the fact that a police officer has acted improperly when, at the time, the other was acting reasonably and doing everything he knew under the guidelines then in effect and where his actions are not judged wrong until a year or two later by some appellate court. It is wrong then to say that the person who cleanly was guilty of the crime should now be freed simply because of what a court finds was the wrong guess by a policeman as to what he was supposed to do.

At the same time, when you turn to the other end of the scale, we should have much better prisons than we do today. It is absolutely critical that we have humane custody of anyone who is incarcerated, and the power of the state should be used in such a way as to provide decent, humane quarters, not the kind of thing where the person is subject to attacker or to intimidation and mistreatment. I think we ought to have much better work programs for people in prison who wish to rehabilitate themselves, who wish to participate in a work program.

We ought to take the person who has committed a crime, been convicted of a crime, and if he or she is willing to participate in his or her own rehabilitation, to give the person every benefit to return as a useful citizen of society. That to me is the best kind of crime prevention, because you have taken a person with clear, demonstrated proclivities toward crime and you've turned that person around, and I think we don't do nearly enough toward providing adequate prisons, toward providing humane prisons or toward providing rehabilitation.

Now, there are some who believe there is no hope of rehabilitation. I don't believe that. I believe there is some percentage—and no one knows for sure what it is of those who've been convicted of crime that, given the right kind of assistance and treatment; will never commit another crime. But right now we have kind of a Gresham's law of criminology and penology that is, the worst people are setting the tone for the prisons.

We can do a lot better in the whole field of penology and the administration of prisons, but it's going to take money and the public generally is not willing to afford, to provide money for new prisons and better prisons. I think this would be one of our most effective investments.

Q: But how do you get the state or Congress or anybody to spend money on that at this time when you have to cut every other thing?

A. Well, you do it like any other political problem or issue of public policy and that is you have got to convince the people and we don't have enough people who are really knowledgeable in this area who are willing to talk with the public and to acquaint the public with what is needed.

Q: Can you imagine the president speaking out on this? It doesn't strike me as a Ronald Reagan issue necessarily.

A: Well, actually it is, extraordinarily enough. When he was governor of California, he did a great deal toward improving the prisons there. He was the first governor in California to initiate family visits to try to keep prisoners in a close relationship with their families, with their wives, and with their children, and allowed these families to visit with the prisoners on the prison facilities. And there were a number of other rehabilitative type features that started with the appointment of the excellent director of the department of corrections and some major small changes some of which were actually thwarted by court decisions that came out during the time that he was there.

Q: I'd like it if you could talk just a bit about the judicial philosophy of this administration. When the Nixon administration came here, there was a great deal of talk about the war on crime and the need for "strict constructionists" and so forth. They felt very embattled in terms of their own judicial philosophy and trying either to implement it or to impose it on the system. Is that true of this administration?

A. Well, I don't want to make any comparisons with any other administration. But I think we have our own philosophy, and that is that we feel it is government's first responsibility to protect citizens against those who would commit crime against them that basically most forms of protection and then prevention as well as the apprehension and prosecution of criminals at all the state and local levels.

It's the responsibility of the Federal government to provide support in those areas that are primarily the role of the Federal government, such as interstate crime, organized crime, the importation of narcotics and things like that. As far as translating this into judicial philosophy, this goes not only in criminal law but in all aspects of the law. The president is looking for judges who feel that it is their responsibility to apply the law and not make the law, and we have had a good deal of judicial legislation over the years. The president feels, as I think most lawyers would agree, that the judiciary is the most powerful branch of government because in the end it interprets what other branches of government do, and the more power you have the more restraint you have to use so that that power is exercised properly and not abused. And so the president feels it is particularly true in the appointment of judges that they must have a judicial temperament that recognizes the tremendous power they have and must be capable of using restraint in the exercise of that power.

Q: Does the administration support the various moves of the Congress to try to trim back the jurisdiction of the courts?

A. We haven't taken a position on most of this legislation as yet. I personally have some real concerns about selectively cutting back on the authority of the court because I think again it gets back to this balance. But what happens is where the court has abused power, then there comes a tendency on the part of the legislature to try to curtail this power. That's a kind of a conflict between branches I would hope we would not get into.

Q: There was another question what you said about reporters being receivers of "stolen property," fences for classified leaks and so on. What did you mean?

A. What I said was that when the revelation of clearly classified information would harm the national security, I thought it was improper for reporters or anyone to use it because in effect it is stolen property. For someone to use stolen documents and make them public when that would harm the security of the nation was, I thought, the wrong thing to do.

Q: You think there should be criminal penalty attached?

A. Well, I haven't looked into it that far to see to what extent it should be made criminal. I think there may already be some criminal penalties as in the person who receives or uses stolen property.

Q: But haven't you found since you have been here that there is too much classification?

A. Oh, yes, I think there is way too much classification, and I think that's one of the things that has given rise to the relative freedom with which some of the reporters use this material, and I think that's one of the problems of government—that is, the overclassification of documents. You really should only classify something if its revelation would actually harm the national security. Not that it would embarrass someone or make someone look bad.

[From the Christian Science Monitor, Jan. 3, 1983]

Ed Meese's Midterm Assessment

(By Godfrey Sperling Jr.)

Presidential counselor Edwin Meese is convinced that one of the chief, though unheralded, accomplishments of the Reagan administration is that it has brought about a complete change in the "dialogue" in Washington.

No one, insists Meese, talks any more of increasing government power. Instead, Mr. Reagan has been able to put the focus of Washington's movers and shakers—Democrats included—on how best to cut back on government and government spending.

In a year-end interview. Mr. Meese also had this to say:

Q: Your great disappointment, then, is that you haven't been able to deal with the economy as quickly and effectively as you would have liked?

A: I wouldn't call it a disappointment so much as a concern on our part:

Q: But on the economy: what do you feel you have accomplished?

A: I feel we have made real progress in four areas: We have brought the growth in fedeeral spending under control: we have been very successful in reducing the rate of inflation: we have been successful, because of lowering inflation, in bringing down the interest rates; and we have made material improvement in lessening government regulations.

Q: But don't you have big thorns in your sides: high unemployment and that massive deficit?

A: The main problem is unemployment. It is a result of the recession. And, frankly, the deficit is the result of the recession. If we could decrease unemployment by 2 or 3 percentage points, we would make a big dent in the deficit. Because every percentage point that unemployment increases means a total increase in the deficit of about $25 billion.

Q: What are your expectations now on unemployment going down?

A: All of us are looking to a turnaround in the economy next year.

Q: At what point?

A: No one can say for sure. But we have already seen some improvements, for example in housing. And I think we will see more at the start of 1983. I think that unemployment as a lagging indicator will take longer to show improvement. But I think we will see some improvement in the unemployment picture by the end of 1983.

Q: Will we see some improvement in the interest rates?

A: I would hope there will be more.

Q: What would the President want to achieve in the next two years?

A: First, he would like to complete the revitalization of the economy.

Second, he would like to continue with the rebuilding of our national defenses. We have already made much progress there. That's another success area.

Third, he would like to continue with the successes we have made in our new federalism program. We have already done much with block grants: he would want to begin returning some functions to state and local governments.

Fourth, there is the President's desire through a federal effort to control the importance of drugs and prevent crime.

Fifth, he wants to improve education and provide health care at less cost to the citizens.

Q: On another subject: How long is the President going to let Prime Minister Begin thwart his Sept. 1 peace initiative by continuing the settlement on the West Bank?

A: Well, our people are working with Prime Minister Begin in consultations: and we are hopeful that ultimately he will come around to accepting the President's position on this. And we are using every effort now to persuade the Israeli government that this initiative is the best way to move forward toward peace in the Mideast.

Q: You are making progress in your effort to get the Israelis to move out of Lebanon?

A: Well, we are in the process of what we hope is making progress.

Q: Looking again at midterm and the presidency: Has the President himself changed or grown over these two years?

A: In personality he hasn't changed at all. He has maintained his good humor, his even temper. Also, he has not changed as far as his objectives are concerned or in his perseverance toward the goals he feels represent the mainstream of the Amerian people's thinking.

He has shown he could learn quickly, particularly in foreign policy where he now deals very comfortably with other world leaders.

Q: What are the strongest qualities you think this president has?

A: One of them, obviously, is his ability to persuade other people. Secondly, there is his genuine likableness which has been important in his relations with Congress, with people in the United States, and with world leaders he has met.

A third quality is his willingness to go forward no matter how tough the battle might be: perseverence.

Finally, he's shown consistency. He has maintained his objectives and his principles. He has not vacillated.

[From the Chicago Tribune, Dec. 29, 1984]

APPOINTING A CRONY-GENERAL

According to Archibald Cox, the former special prosecutor in the Watergate case, presidential counselor Edwin Meese has shown "utter insensitivity to ethical standards" and therefore should not be confirmed as U.S. attorney general. His reasons seem more complicated than they need be. Mr. Meese should not be attorney general simply because he is a bad choice for the job.

Mr. Cox made his comments at a press conference on findings by another special prosecutor—this one a court-appointed investigator who looked into charges that Mr. Meese had violated federal laws. The conclusion was that he had not. He was charged with nominating or supporting for federal jobs several persons with whom he'd had financial dealings; Jacob Stein, the independent counsel, did not dispute that, but found that these actions did not add up to criminal wrongdoing. Mr. Stein did not comment on the ethical questions involved or Mr. Meese's overall fitness for the post.

Ethics is just what concerned Mr. Cox and Common Cause, the public-interest group he now heads. And it has become the principal focus of attention in the Meese appointment.

But this is not the only arugment against Mr. Meese, or even the main one. Let us pretend that Mr. Meese had never tried to wangle federal jobs for people who had done him financial favors—that he was a model of rectitude admired by all. That does not change the fact that he is unqualified for the post.

Mr. Meese has some background in law; he was deputy district attorney of California's Alameda County, and formerly directed the Center for Criminal Justice Policy and Management at the University of San Diego school of law. But this country abounds in better legal scholars and constitutional experts; Mr. Meese is primarily a businessman, and his role in the administration has been that of a planner and organizational troubleshooter. He was nominated for the sole reason that President Reagan likes him and seems unaware that any other qualification is needed.

If the appointment goes through, it will be an unabashed admission that the federal government is being run on the buddy system. To be the nation's top legal officer under this administration, one apparently needs only to be a booming, jovial fellow whose political views coincide with the President's. But that isn't nearly enough.

[From USA Today, Jan. 30, 1985]

BAKER IN; MEESE FIGHTS ON

(By Bob Minzesheimer)

WASHINGTON.—The Senate unanimously confirmed White House Chief of Staff James Baker as Treasury secretary Tuesday—even as attorney-general designate Edwin Meese battled new questions over his fitness for office.

The Senate's 95-0 vote clears the way for Treasury Secretary Donald Regan to take Baker's White House job. Baker's swearing-in may be this week.

Support was less solid for Meese as his confirmation hearings opened Tuesday, but Senate Judiciary Chairman Strom Thurmond, R-S.C., said he still hopes for an approval vote Thursday.

At Tuesday's session:

Meese minimized an Office of Government Ethics staff report questioning his ethics, saying last year's probe into his financial dealings "left no stone unturned."

Meese said it was "entirely proper" for his lawyers to contact ethics office director David Martin, who vetoed the critical report.

Martin and two staff lawyers testify today.

Sen. Howard Metzenbaum, D-Ohio, said Meese "lacks the integrity of character" to be attorney general.

Sen. Orrin Hatch, R-Utah, said the ethics issue is opponents' "last resort."

[From USA Today, Jan. 30, 1985]

OVERRULED ETHICS REPORT CITES TWO POSSIBLE MEESE VIOLATIONS

(By Bob Minzesheimer)

WASHINGTON.—The Office of Government Ethics released an internal report Tuesday that accused Attorney General-designate Edwin Meese of possible ethics violations.

The staff report was overruled by David Martin, head of the ethics office, who found no ethics violations. The issues:

In June and December 1981, San Francisco accountant John McKean arranged for two loans to Meese totaling $60,000. In October 1981, McKean was nominated to the U.S. Postal Board of Governors and is now chairman.

McKean later agreed to delay interest payments, and ethics staffers said Meese may have violated federal law in accepting the "gift."

But Martin wrote that there was "no evidence" McKean was looking for a job at the time of the loans and that interest was above bank rates.

In September 1982, California developer Thomas Barrack used $70,000 of his own money to help arrange the sale of Meese's California home.

In November 1982, Barrack accepted a job at the Interior Department. The staff cited an ethical "appearance problem."

Meese said he was unaware that Barrack was financially involved in the house sale.

[From the New York Post, Jan. 30, 1985]

MEESE: I'M RIGHT MAN FOR ATTORNEY GENERAL

(By Niles Lathem, Bureau Chief)

WASHINGTON.—White House counselor Edwin Meese yesterday told the Senate Judiciary Committee that he is fully qualified to be attorney general.

Meese said that a special prosecutor's report on his finances last year had proved that he had met all the ethical and legal standards necessary to be confirmed.

"Reading these detailed facts in the report, I believe supports what I have always known to be the case, which is that I have conducted myself in accordance to ethical as well as the legal standards of behavior for public officials."

Meanwhile, another White House official, seeking a cabinet job, had a much easier time yesterday.

The Senate voted 95–0 to confirm outgoing White House Chief of Staff James Baker as secretary of the treasury.

Officials say that incoming chief of staff and former Treasury Secretary Donald Regan will be taking over his new duties this weekend.

During the Judiciary Committee hearing Meese admitted that he would have handled his troubled finances differently if he had known the issue of personal loans from political associates who later got government jobs would have blown up into a major political issue.

"In the last four years, I have learned a great deal about how people view things," Meese said.

He assured the committee that his finances are now in order.

But several senators remained opposed to Meese's nomination although he was cleared of all criminal charges by Special Prosecutor Jacob Stein last year.

Sen. Howard Metzenbaum (D-Ohio), who was the leading opponent of Meese's nomination last year, said Meese "may not have violated any crimes but he has failed to meet the standards we must apply for the nation's most powerful law enforcement officer."

Metzenbaum and Sen. Joseph Biden (D-Del), continued to make an issue out of the very charges that Meese was cleared of—the two loans made to his family by California businessmen who later received government jobs.

Meese kept his cool throughout the questioning—at times tweaking senators "to get their facts straight."

The hearings are expected to resume today, when the committee hears testimony from representatives of the lobbying group Common Cause, who oppose Meese's selection.

[From the National Journal, June 15, 1982]

AFTER 16 MONTHS AT THE WHITE HOUSE, MEESE BOWS TO THE POLITICAL REALITIES

IN AN INTERVIEW, PRESIDENTIAL COUNSELOR EDWIN MEESE III REFERS LESS OFTEN TO THE ADMINISTRATION'S IDEOLOGICAL GOALS THAN TO THE LIMITS OF ITS POWER

(By Dick Kirschten)

Presidential counselor Edwin Meese III was a principal strategist of Ronald Reagan's sweeping victories in the elections of 1980 and the legislative battles of 1981. But 16 months into office and staring down the barrel of this fall's mid-term elections, Meese and his colleagues in the White House find themselves bogged down in the tough political trench warfare that typically occurs in a President's second year.

Once again the President's budget is the dominant issue. Last year, the Administration won dramatic tax cuts and a shift in priorities from domestic to defense spending. Now, with economic recession and high interest rates producing glaring deficits, the "Reagan Revolution" has lost momentum.

In a meeting on May 27 with National Journal editors and reporters, Meese spoke less about ideological objectives than he did about the need to make trade-offs and "face the political realities." Following is an edited transcript.

Q: The Administration appears to be moving backwards on the road to a balanced budget. The President's February budget anticipated a $91.5 billion deficit, and he has since endorsed a $116 billion deficit in the Senate's plan. How does the White House respond to critics who say that the economy will not tolerate deficits of that magnitude?

A: I wouldn't say that we welcome deficits of $116 billion, but I think the President said he was prepared to accept that as the lesser of a number of evils. These are the kinds of things which involve a trade-off. Sure, we would like to get a lower deficit if that were possible. But we are willing to accept the Senate budget because political reality indicates that's about as good as we can get out of the Congress.

Secondly, we think it's very, important to get something rapidly because until we get the economic stability that a budget resolution will provide, you're still going to have sufficient uncertainty as far as the markets are concerned, which will keep the interest rates up. More important than the size of the deficit, as long as it's somewhere near the $100 billion mark, is the fact that you would show declining deficits in future years.

Q: Do you think the budget process would have worked better this year if the President had been involved in negotiations with congressional leaders from the outset?

A: Absolutely not. I sat in with the President and participated in the meeting that we did have with [House Speaker] Tip O'Neill and [Senate Majority Leader] Howard Baker, and you could have had them in there for seven weeks and I don't think anything would have come out of it. All you would have had is posturing and a race for the TV cameras each time there was an adjournment. You would have had a circus going on day after day.

Q: After Congress adopts a budget resolution, what are the chances for substantial implementation of the budget before the election? If there is not substantial implementation, do you see interest rates dropping before November?

A: I think that you have a good chance of implementation, or at least having a situation in which the markets can have some confidence. Also, you'll have the President then committed to veto appropriations bills which differ cumulatively from the budget resolution. I think that combination will provide enough certainty that you will see some action on interest rates.

Q: There is a continuing thread of criticism that the process of bartering with Congress will not produce sufficiently drastic steps to right the economy. Some critics say there must be greater sacrifice by the middle class and upper class, perhaps by taxing their social security benefits. If a President with Ronald Regan's conviction won't bite the bullet, who will?

A: When you look at what's happened in our 1982 and 1983 budgets and what's ahead, you have a pretty major change. We took over a government which was increasing its spending at a rate of about 14 to 17 percent per year over the last several years. That was cut about in half in the '82 budget, and we're still somewhere in the 6 to 7 percent range in our '83 budget. As far as entitlements are concerned, the budget resolution proposals that are being debated now—and which we think will pass—have some major changes, including some limits on cost-of-living increases other than in the social security program. I'd say this is a fairly dramatic change from what was going on prior to Ronald Reagan's getting elected.

Q: When you get the resolution passed, what would you regard as an acceptable reaction either in the economy or in the markers?

A: It would be nice to get interest rates down by about 6 points, but I think if you get them down 2 to 4 points and they appear to be stable and continuing downward, that's the kind of thing that will cause the economic recovery to take place. You have all the conditions in place—inventories are fairly well used up, there is pent-up consumer demand, adequate cash and an income tax cut that will be reflected around the first of July—an awful lot of things that would indicate that we'll have an expanding economy as soon as the interest rates get down.

Q: How concerned are you about the so-called "fairness issue", which is raised a lot in the press and in Congress?

A: It's a phony issue, but it's one that has a great deal of adverse effect on public perceptions. If you really try to find somebody who has been adversely affected by the budget cuts, you have to look pretty far and wide. The social safety net concept has been abided by, in terms of both the fiscal and the regulatory actions we've taken. You've had some sabotage in some cases and some cases where it's just been the sheer happenstance of the foul-ups normally expected in government.

On the tax side, we have had the fairest possible tax cut, which is an across-the-board tax cut. If a person is paying a lot of taxes and he gets a 10 per cent cut. He's going to have a greater dollar cut than the guy who's paying less taxes, but it seems to me that's absolutely fair.

Q: Public opinion polls show President Reagan's popularity lagging among minorities. Has the Administration been trying to move closer to these voters through shifts or evolutions in its positions on civil rights issues?

A: It's not a matter of moving closer as it is to accurately portray the position this Administration's had all along. I think our original position on the Voting Rights Act extension, for example, was about as courageous as anybody in the Republican Party or with anything resembling a conservative constituency was willing to take in 1981. The bill that got through the House contained an "effects test" provision that nobody had dreamed was possible. We thought there ought to be some protections so that there would not be an "effects test" in the sense of proportional representation. Some protections were added in the Senate and this being the best we could get, we were willing to accept it.

Q: There have beens some new appointments of blacks in the White House and other initiatives. Has this helped?

A: There has been a lot of communications as well. When you're dealing with a relatively small percentage of the public, in terms of blacks that might vote Republican, it's pretty hard to get a survey that's going to tell you that. On the other hand, we think that the general public perception, beyond the particular constituency, has improved in this regard.

Q: How will the Administration deal with the estimated half a million young men who have failed to register for the military draft?

A: Obviously by prosecuting those who defiantly refuse to register, but there are really very few of those. Most people when they are reminded or they know that somebody is checking up on them, do in fact register. Also, we are exploring ways to encourage people to register by requiring evidence of registration for those who apply for certain federal benefits, such as student loans or unemployment benefits.

Q: Press reports indicate that your efforts to work with environmental leaders who have been critical of the Administration were not successful. Audubon Society president Russell W. Peterson, who was among those who met with you, has renewed his public attacks. What happened?

A: I think our motives and our actions have been misperceived and, to the extent that Russell Peterson believes what he wrote in his article, he is helping with those misperceptions. I think he was a governor someplace at one time, wasn't he? [Peterson, a Republican, was governor of Delaware.] He ought to have a little more understanding of what government's all about. We all wanted to talk in good faith and had agreed that we would get a lot further if no one went running to the press afterwards trying to make the other side look bad, which, of course, is unfortunately one of the first things he did.

Q: Do you think you have an election problem with respect to the environmental issue?

A: An election is made up of a lot of little things. In 1982, I don't think the voters are testing the Republican Party on environmental issues so much as on economic issues. But we don't want to have a public that misunderstands the President's position on the environment. What has happened is that he has taken over a lot of [federal environmental] regulatory schemes that really didn't make an awful lot of sense.

Q: Are Republican congressional candidates hurting the President by trying to put some distance between themselves and some of his objectives?

A: I think you'll find that by the time the election rolls around, you're going to have a lot of those people creeping back and getting very close to the President.

Q: Some of the Administration's New Right critics charge that Vice President George Bush is positioning himself and his aides for the 1984 presidential race.

A: If you've ever seen a guy who was not positioning himself as Vice President, George Bush is the guy. He has gone out of his way to be self-effacing and has been a tremendous team player. I don't think you can find an instance in the 16 months we've been here that he has done anything to enhance his own political position at the expense of the President.

Q: Is President Reagan planning to seek reelection?

A: He hasn't decided yet. I'm convinced of that. He is the unusual kind of person who doesn't worry about something until it is time to make a decision. He will make that decision, I suspect, in mid-to-late 1983.

Q: How do you assess the critcism that President Reagan has failed so far to establish himself as an effective international leader?

A: I don't know where that criticism is found; I haven't seen it. I think the NATO alliance is a lot stronger and the strength is largely coming from the leadership the United States has given. I think there's a much greater respect for our position as far as defense is concerned. I think the lead that the President has taken in terms of arms reduction has bolstered materially the position of several leaders in Europe with their own constituencies on this very sensitive point, and they are appreciative of that.

Q: The Israelis' decision to go ahead with their West Bank settlement policy increasingly makes it difficult for the Palestinians to envision an acceptable outcome through negotiations. The United States appears to have put very little pressure on the Israelis to curb that sort of policy.

A: I think we've made it clear what our position is. Settlements are not helpful. But, frankly, unless we want to sever entirely our influence on Israel, there's a limit to how much we can do. You have a very touchy internal situation there, and we've tried to pursue the objectives of peace and stability in the region in as effective a manner as we can.

Q: Do you believe that the United States can maintain the political consensus necessary to keep pace with Soviet arms production?

A: I'm not sure that we can outspend them, but we can demonstrate the resolve to meet them. I think there is a consensus, and the debate is not whether we increase defense, it's the level and the amount we can spend in any given time. In Congress, with all the weeping and wailing, the most anybody is talking about is about a 2.5 percent reduction in a hefty increase in the defense budget.

[From the National Law Journal]

ED MEESE AND THE LAW

A TOP WHITE HOUSE AIDE GIVES HIS VIEWS ON THE NEW ATTACK ON DRUG TRAFFICKING, THE APPOINTMENTS OF FEDERAL JUDGES AND THE ADMINISTRATION'S IMPACT ON THE LEGAL SYSTEM

Edwin Meese III, counselor to the president, is perhaps the Reagan administration's most ardent law-and-order advocate.

As a member of the president's "triumvirate," he has assumed the role of chief policy adviser to the president. And those who know both men well say that Mr. Meese—more than any other presidential adviser—speaks with the same voice as Ronald Reagan on almost every issue.

Mr. Meese's interest in law-and-order issues has been long-standing. After graduating from Yale, he earned his law degree at the University of California's Boalt Hall. He then spent eight years as a prosecutor with the Alameda County, Calif., district attorney's office.

Joining Governor Reagan's administration in Sacramento, he directed the governor's tough response to the dissident-student movement that spread to California college campuses in the late 1960s. After a brief stint in the private sector, Mr. Meese founded and directed the Center for Criminal Justice and Policy Management at the University of San Diego before rejoining the Reagan team.

In this interview with National Law Journal Washington bureau chief Kathleen Sylvester, Mr. Meese talks about some of the Reagan administration's initiatives in the area of criminal justice; the accomplishments and controversies of nearly two years in office; his philosophy on the appointment of judges and future goals for the administration.

NLJ: First, let's talk about the new drug program, is that a high priority for the Reagan administration?

It is. One of the first things we did when we came in here was to try to identify what the federal role in law enforcement should be, because over the years it's become confused, particularly when the LEAA [Law Enforcement Assistance Administration] started getting into funding of local law enforcement programs. So our first effort really was to figure out the federal role. Let me boil it down to three things. Primarily, crimes with which state and local law enforcement couldn't cope, such as interdicting the supply of narcotics coming into the country. Along with that would be interstate crime and that sort of thing. Secondly was the idea of providing support for local law enforcement on the scene and coordinating our activities. For example, the FBI would get information on a case, and there wouldn't be cooperation with the locals too often in the past. On similar cases or related cases, through these law enforcement coordinating committees headed up by the U.S. attorneys in each district, we've now developed a much higher degree of coordination which, because of the cost and the need for experties, is best provided on the national level. By this, I mean by the FBI laboratories, the training programs of the FBI, the new joint training center in which Treasury and Justice together are operating.

So, a major priority within the federal crime area has been narcotics, because the Attorney Generals Task Force on Violent Crime decided that was an area in which the federal government could really take some action. So we started by getting all the departments involved. We got amendments so the Defense Department could assist with aerial survelliance, radar and that sort of thing, or we could use naval ships so the Coast Guard crews could board other ships if they're running narcotics. We got the State Department involved and the assistant secretary of state for international narcotic affairs is really working now with other countries to try to get their cooperation in eradicating the narcotics sources. We've got the Coast Guard much more active than they've ever been through the cooperation of the secretary of transportation. We've got Customs and the Bureau of Alcohol, Tobacco and Firearms working with DEA [Drug Enforcement Administration] and the FBI. The FBI for the first time in history is now involved in narcotics investigation. So we've really harnessed these resources. Then, we were able to pinpoint the key places where most of the narcotics traffic was going on. One of them turned out to be the south Florida area and that's where we tried this task force idea. That's been going since I held the first meeting of this in January, and it's been going now for almost 10 months, with tremendous success.

NLJ: Do you think this new approach is so different that it will be able to handle the problem? The whole area of drug trafficking has been virtually untouchable for a long time. (NLJ, Nov. 1.)

It will make a big dent in it, because you've never had this coordinating of resources and priority attention to it like we have now. Now, the other thing about narcotics is that we're not just stopping with the law enforcement end of it, but we're going also into the prevention and the education and the research, the medical treatment and all the other facts of it as well.

NLJ: What about the timing of this announcement? Are you prepared to take the criticism for this coming two weeks before the election?

Well, if it was two weeks after the election they'd say we delayed it, because it was read. They wanted to evaluate the results of the South Florida Task Force, so they had to give that at least six months, and as soon as that was over and they had a good evaluation, they started working on this expansion, and it got to us just at this time.

NLJ: How is this new initiative going to coordinate with local efforts? The strike force had a problem being effective because of competition.

For one thing the role is different. We're going after the major narcotics dealers who don't operate in a particular jurisdiction. We'll be going after planes and boats [used in drug smuggling] and we'll be looking at organized rings that transcends boundaries, so I think there will be cooperation in there sense of sharing information. But just as it worked in south Florida, the mission of the task forces will be different. The local law enforcement is essentially directed at street sales or sales within their boundaries. We're looking at the wholesalers.

NJL: Obviously, as the midterm election approaches, the economy and the issues related to it are going to be foremost on peoples minds. Where do you think the crime issues ranks? How important is it?

It varies—certain events will happen and that brings it more to people's attention—but for the most part crime is usually one of the top three problems people talk about, year in and year out. And particularly when you ask them: "What's the greatest problem facing you in your community?"

NLJ: Law-and-order issues have always been high on your agenda. They have been something that you've talked about consistently. Beyond this drug project, what other kinds of things are on the agenda?

Organized crime, of course, which is one of this particular task force's objectives. So it's really organized crime and narcotics. Other law enforcement activities are the training programs, which we got going. Other things are happening in the victims area. We have a victim task force working now to come in with new recommendations as far as crime victims, which would include not only the actual victim of the crime but also the witnesses and others, who through no fault of their own, get involved in the criminal justice system. So, that's another big area. Another thing we've been working on is improving our ability to handle such things as terrorism offenses, such things as improving our capabilities in the areas of explosives, firearms and other types of things that relate to terrorism.

NLJ: Over the summer, The National Law Journal took a look at what kind of impact the Reagan administration is having on the legal system. And generally, people on both sides responded by saying "not much"—that you have not made any fundamental changes. What's your response to that?

Well, I don't think you can tell in one year, which is about where you were measuring it, what impact this administration has had, because the impact is going to be seen over a period of years in various ways. We think that the bills we have before Congress now will have a real impact. The crime control bill that's up there now, we think will get through in the lame-duck session . . . Then we have an additional bill, the Criminal Justice Reform Bill, that includes the insanity defense, the modifications of the exclusionary rule and federal intervention of state government proceedings. And we have the appointment of judges, the quality of judges. That impact won't be felt until we have had more chance to appoint more judges, but already it's starting to be felt in the appellate courts even with the few we've appointed.

NLJ: Are you looking for more (Robert) Borks, (Ralph) Winters and (Richard) Posners (recent appointees to the D.C., 3d and 7th U.S. Circuit Courts of Appeals, respectively)?

Right. People who are high quality intelletually, but also who have a sense of judicial restraint, and who basically will have a very beneficial effect on restraining the judicial activism that has characterized some of the courts in the past.

NLJ: Will you be able to make enough appointments to counteract the impact of the Carter judgeships?

Oh, I think so. Well, I hope so. Admittedly, he had quite a few because of the changes in the laws. The kind of people that we're trying to put on, like the Borks and the Winters and the Posners and others, will have an influence on the courts, perhaps out of proportion to their numbers.

NLJ: How do you go about finding them? Is there a litmus test?

There's no litmus test, but we have people looking to find the best judges, the best district court judges and the law professors and the best practicing attorneys that we can for circuit court appointments. And, in each state, senators have their groups looking for those people for district courts.

NLJ: As a lawyer, do you think it's appropriate to scrutinize a judge about political beliefs before the appointments?

Some firms indicated that corporate clients use the seminars to educate their employees; in many cases, the firms say, the number of representatives a client sends increase over time. Epstein Becker lawyers attribute part of the growing popularity of the seminars to the depressed economy: clients may be calling their lawyers now only in a crisis, turning instead to seminars as an inexpensive form of general counseling. Seminars also provide an opportunity for clients in a particular field to come together, exchange ideas and discuss mutual problems, the Epstein Becker lawyers add.

One client who attended the Epstein Becker conference. Salvatore J. Russo, general counsel of the Greater New York Hospital Association, says it was "very helpful" because it provided a good discussion of legislative developments and "a different perspective" on issues in the health-care field. "It's always good to hear a different perspective on the same thing," he says, "and there's no charge—which is the nice thing."

BUSINESS OR SERVICE?

The firms also realize a number of benefits for themselves. They say that seminars allow clients to see that firm lawyers are experts, thus justifying high legal fees. One lawyer said that preparation for the seminars keeps firm lawyers sharp by forcing them to think and write about various issues. And another said that the social functions attendant to the seminars allow clients to meet a greater number of firm lawyers, particularly those from other branches, and to see that the firm has expertise in a number of areas.

But the primary purpose, they insist, is to "service" clients—and not to generate business. "There was a feeling at our firm that clients don't get enough service from firms over and above that which they are charged for," says Mr. Connolly of Pepper Hamilton. "We felt it was necessary from a PR standpoint to let clients know we weren't just interested in making money."

The firms that regularly conduct seminars say that virtually all of those who are invited are current clients, although Seyfarth Shaw, for example, invites a small percentage of persons who are not clients but with whom the firm has a "nexus," like former clients or corporate officers known by firm attorneys. Andrew M.

Kramer, managing partner of the firm's Washington, D.C., office, says about 5 or 6 percent of those attending the seminars' general session are non-clients.

"We do it to enhance existing relationships, not for the purpose of establishing new ones," says Mr. Green of Epstein Becker.

"I think some people that do it start out thinking that seminars will generate business," says Mr. Connolly, "but anybody that starts out with that as their purpose doesn't understand what's happening in the legal profession today." He explained that in-house corporate counsel are sophisticated purchasers of legal services and won't be swayed merely by a seminar.

RAISING QUESTIONS

Yet other lawyers acknowledge that providing service to clients can bring tangible business benefits. "The better service you provide, the better chance you have to keep clients," says Mr. Krupman of Jackson Lewis. And he says that seminars can "raise questions [among clients] and certainly there's some possibility that it will develop into reasons for talking to us further." But, he adds, "They're not worth doing just for that."

At one session of the Epstein Becker conference, the discussion was obviously designed to generate business as clients heard presentations on the benefits of changing their health-related organizations from nonprofit to profit status and on possible public and private source of funding.

But Mr. Connolly believes that seminars hold the potential of having a negative impact on clients. One way, he says, is for firms to take an "egalitarian" approach and allow many lawyers to speak even though some may not be good speakers or that knowledgeable. He adds that clients can easily be turned off by heavy-handed self-promotion.

Heavy-handed or not, self-promotion appears to be a fact of life on this seminar circuit.

When discussing a question on Medicare funding at the recent Epstein Becker conference, for example, partner Robert Borsody acknowledged to his audience that neither he nor anyone else in the field knew the answer. But he gave them comfort about his legal knowledge: "You can be assured that nobody knows more."

[From the Washington Post]

MR. MEESE VERSUS CIVIL LIBERTIES

Edwin Meese III, President Reagan's counselor is an amiable man, who carries his responsibilities as the chief White House policy adviser without a load of pomposity. Busy as he is, he returns a lot of phone calls and even goes out to make a speech now and then.

A speech Ed Meese made two weeks ago to the California Peace Officers Association in Sacramento is still rattling around town—as it ought to. It told us something important about the president's right-hand man, something we will forget at our peril. It told us that the lawyer now occupying that vital position is insensitive or hostile to civil liberties, when they appear—to him—to conflict with putting bad guys in jail.

As described by Carl Ingram of the Los Angeles Times, who was there, the former Alameda County prosecutor was discussing law enforcement problems when the public address system squawked static. He ad-libbed, "I didn't know the ACLU [American Civil Liberties Union] was that powerful."

"That reminds me," he continued, "of one other thing that has developed in the last 20 years. That is, there has actually been the emergence, not only in California but throughout the nation, of what might be described as a criminals lobby."

Meese said the "opponents of effective criminal justice legislation" were active in the 1960s, but it was only in the 1970s that a coalition of group "came out and actually bargained on behalf of the criminals."

Meese's factual error was not important in itself. But, like Reagan's slips, it was significant for the stereotype it revealed. As with Reagan's story about the "welfare queen" of Chicago, the language told you everything. In Meese's mind, "what was loosely referred to as the liberal coalition" in the footnote became "a criminals' lobby."

In the administration, where no one likes to dispute Meese, three days of repeated questioning of the acting White House press spokesman produced only the information that Meese was "speaking for himself" and the president "does not feel a need to express an opinion."

When Attorney General William French Smith was asked about it at his press conference, he said he often disagreed with the ACLU, "but I would not characterize it myself as a part of a criminals' lobby."

Despite all this dancing around the subject by his colleagues, Meese himself was not ducking at all when I called him after the Smith press conference, "I was talking about the increase in crime, and I said one of the problems was that a group of organizations had lobbied against law enforcement legislation, or, in essence, had turned into a lobby for criminals. . . . When they lobby on behalf of criminals, I think it's appropriate to use that term," Meese said.

The ACLU was upset. Their Washington lobbyist John Shattuck said he was "appalled." But I think it is well that we know where Ed Meese stands. Ever since the ACLU was founded in 1920 "to defend the Bill of Rights, even when we may disagree with the groups that are exercising those rights," as the charter said, it has risked offending powerful people. From the teaching of evolution in Tennessee, to the publication of "Ulysses," to juveniles' right to trial counsel, the Nazi march in Skokie, the ACLU has defended some awful unpopular causes.

No one at ACLU remembers a presidential assistant previously categorizing the group as part of the "criminals' lobby," but Meese is uncommon outspoken. Earlier he let it be known that he had encouraged the president to pardon the two FBI officials convicted by a jury of authorizing illegal break-ins during the Nixon administration's drive against radical opponents of the Vietnam War.

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